

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1240

B
P/S

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

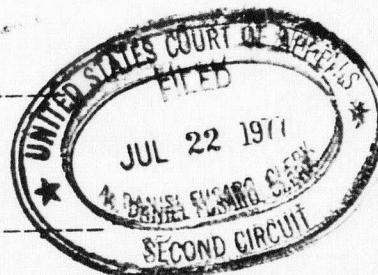
-against-

PRAVIT PIYACHINAVAN,

Defendant-Appellant.

*On Appeal From The United States District Court
For The Eastern District Of New York*

Appellant's Appendix



GILBERT EPSTEIN
Counsel for the Appellant
Pravit Piyachinavan
100 Church Street
New York, N.Y. 10007
(212) 962-1564

PAGINATION AS IN ORIGINAL COPY

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PRAVIT PIYACHINAVAN

U.S. TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

21:841(a)(1), 846; Did possess with intent to
13:2 distribute quantities of heroin.

U.S. MAG
CASE NO.

76 M 1754

BAIL - RELEASE

100,000

8/31/76

Bail Not Made

Status Changed

(See Document)

II. KEY DATES & INTERVALS

SUPERSEDING
COUNTS

ARREST or

INDICTMENT

ARRAIGNMENT

TRIAL

SENTENCE

U.S. Custody Began

8/31/76

Summons Served

First Appearance

8/31/76

High Risk Date

9/19/76

Indict. Waived

In Charging District

Information on

9/19/76

Superseding

Indict/Info

10-22-76

9/13/76

Trial Set For

1st Plea

Final Plea

10-29-76

Trial Began

3/21/77

Trial Ended

3/24/77

Disposition of Charge

Convicted

Acquitted

Dismissed

On Government's Motion

MAGISTRATE

Search

Warrant

Issued

Return

Issued

Served

Superseding

Complaint

Complaint

Complaint

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8/31/76

VAC/070A

INITIAL APPEARANCE DATE

8/31/76

PRELIMINARY EXAMINATION OR

Date Scheduled

9/10/76

Date Held

Date Held

Date Held

Date Held

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Importation of heroin - T. 21 USC Sec. 841(a)(1)

U.S. Attorney or Asst.

ATTORNEYS

Defense ☒ Civil ☐ Rat ☐ Waived ☐ Self ☐ None / Other ☐ PO ☐ CO

Charles Clayman, Esq.

*ADLERSTEIN

Legal Aid Society Joy Goldberg, Esq.

26 Court Street

299 Broadway, N.Y. . NY

Brooklyn, NY

374-1040

522-3494

Gilbert Epstein, 100 Church St. NYC

962-1664/5

TEERA PANON 1;

DATE

(DOCUMENT NO.)

PROCEEDINGS

EXCLUDABLE DELAY

9-9-76

Deft. indicted - no number available at this time.

9/9/76

Before CATOGGIO, J. - Indictment filed.

9/13/76

Notice of appearance filed.

9/13/76

Before BRAMWELL, J. - Case called. Deft & Counsel present.

Deft arraigned and on his own behalf enters a plea of
not guilty. Bail reduced to \$75,000.00 P.R.B. with 10% cash.

Deft to surrender passport. Deft to report weekly to pre-
trial services. Case adjd to 11/15/76 for trial at 10:00 a.m.

10-21-76

Notice of Motion for Discovery, Bill of Particulars
etc. (Ret. 10-22-76) (Pravit Piyachinavan)

10-22-76

SUPERSEDING INDICTMENT FILED (S)

10-22-76

Before Bramwell, - cas called - motion for Inspection
adjd to Oct. 29, 1976

10-26-76

Notice of motion to suppress evidence & Memorandum of
Law filed in support of defts motion for Discovery and
Bill of Particulars. Affidavit of Gilbert Epstein filed)

- 10-29-76 Before Bramwell, J.- Case Called. Deft. & Counsel Present. Deft. arraigned & on his own behalf waive reading of Indictment & enters a plea of not guilty. Deft. bail reduced to \$10,000.00 Personal Bond, guaranteed by Eugene & Patawin St. onge plus Cash bail of \$2,500.00 - Deft to surrender all travel documents and passports.
- 10-29-76 Before Bramwell, J.- Case Called. Motion for discovery and Inspection etc. adjd. to 11-5-76 at 10:00 A.M.
- 10-29-76 Before Bramwell, J.- Case Called. Motion to suppress evidence and statements, adjd. to 11-5-76 at 10:00 A.M.
- 11-3-76 Govts affidavit filed in response to defense motions for Discovery & Bills of Particulars with proof of service
- 11-5-76 Before Bramwell, J.- Case Called & adjd. to day of Trial.
- 11-5-76 Before Bramwell, J.- Case Called. Motion argued - Motion granted, and denied as indicated on the record.
- 11-15-76 Notice of motion filed to sever deft at time of trial pursuant to Rule 14, etc.
- 11-15-76 Magistrates proceedings filed re deft received from U.S. Magistrate, Northern Dist. of California including Appearance Bond and Check in the sum of \$2,500 (Cashier notified)
- 11-15-76 Before Bramwell, J.- Case Called and adjd. to 11-22-76 at 10:00 A.M. for Trial.
- 1-5-76 By Bramwell, J.- Order filed that the motion of the deft. for a list of the witness the govt. will call on its case-in-chief, for a list of all the overt acts upon which the govt. shall rely to prove the conspiracy charged in count 3 and for a statement by govt. as to whether the deft. is being charged in counts 1 and 2 are denied; Motion for the govt. to make inquiry of U.S. Customs Service etc. is granted.
- 1.21.77 Proposed Voir Dire Examination of Jury Panel filed and forwarded to Chambers.
- 1.24.77 Deft's. requests to Charge Court filed and forwarded to Chambers..
- 1.24.77 Letter filed received from Chambers to Judge Bramwell from Gilbert Epstein requesting that the Court schedule the trial of Teera Pamon prior to the trial of the deft. so Mr. Pamon will be available as a witness for the deft at his trial. (returned to Chambers.)
- 1.24.77 Before Bramwell, J.- Case Called. Deft. & Counsel present. Deft's. motion to Suppress Search Warrant etc. is denied. On motion of AUSA count 2 is dismissed. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 1.26.77 at 10:30 A.M.

11-15-76 T

3/24/77

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
		(a)	(b)	(c)
1.26.77	(Document No.) Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Hearing on Personal History of Deft. begun. Court having had a hearing on Pedigree Court will permit the Govt. to use it. Hearing concluded. Govt. rests. Deft's. motion for a judgment of acquittal pursuant to Rule 29 etc. & Deft's. motion to dismiss. Court dismissed Count 3 - The Court strikes all evidence from the record namely Exhibits 2-3-8-10-11 regarding conspiracy count. Trial continued to 1.27.77 at 11:30 A.M.			
1.27.77	Government's Request to Charge filed and forwarded to Chambers.			
1.27.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Hearing on question of Miranda Warning begun. (Jury not present). Both sides rest on Hearing. Court renders decision on motion to suppress is denied. Hearing concluded. Deft. rests. Govt. rests. Deft's. motion for a judgment of acquittal etc. Motion denied. Jury sent home at 6:00 P.M. Trial adjd. to 1.28.77 at 9:30 A.M.			
1.28.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Jury came into Court at 6:00 P.M. Court sent jury home. Trial continued to 1.31.77 at 10:00 A.M.			
1.28.77	By Bramwell, J.- Order of Sustenance filed.			
1.31.77	Before Bramwell, J.- Case Called. Deft. & Counsel present. Trial resumed. Jury came into Court at 6:30 P.M. and reported that they cannot agree upon a verdict. Court declares a mis-trial. Jury discharged. Case adjd. to 3.16.77 for Trial. Bail continued.			
2.1.77	By Bramwell, J.- Order of Sustenance filed.			
3-2-77	Notice of motion filed for xxxx dismissing the indictment (ret. March 11, 1977)			
3-14-77	Before Bramwell, J - case called - defts motion to dismiss the indictment adjd to 3-17-77 at 10:am.			
3/16/77	Stenographers transcript dated 1/25/77 filed.			
3-17-77	Before Bramwell, J - case called - motion to dismiss the indictment argued and motion denied with leave to renew. Settle Order on Noticee			
3-21-77	Before Bramwell, J - case called - deft & atty Gilbert Epstein present - Trial ordered and begun - Jurors selected and sworn - trial contd to 3-22-77.			
3-22-77	Before BRAMWELL, J - case called - deft & counsel present - trial resumed - Trial contd to 3-23-77			
3-23-77	Before BRAMWELL, J - case called - deft & atty present - trial resumed - Govt rests - defts motion for judgment of acquittal under Rule 29 etc Motion denied. Deft rests - deft nenews his motions previously made - motion denied - trial contd to 3-24-77			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

76CR 580

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DEL		
	(Document No.)	(a)	(b)	(c)
3-24-77	Before Bramwell, J - case called - deft & counsel present - trial resumed - Order of sustenance signed and filed (Lunch 14 persons) Jury came into court at 3:05 PM and rendered a verdict of guilty on count 1. Jury polled and discharged. deft to report to pre trial services on Thursday of each week. Bail contd - trial contd and sentence adjd without date.			
4-4-77	Transcript filed dated Jan. 26, 1977			
1/27/77	Stenographers transcript dtd 1/27/77 filed.	tk		
5.5.77	Stenographer's Transcript dated 3.17.77 filed.			
5/10/77	Stenographer's transcripdt dated 11/5/76 filed.JLJ			
5-13-77	Before BRAMWELL, J - case called - deft & counsel Jay Goldberg present - deft is sentenced for a period of 2 years plus special parole term of 8 years on count (1). Deft advised of his right to appeal in forma pauperis. Court assigns Gilbert Epstein as counsel for the deft on appeal. On motion of AUSA Adlerstein the original indictment is dismissed. Motion granted. Bail contd pending appeal.			
5-13-77	Judgment and commitment filed - certified copies to Marshal.			
5-13-77	Notice of appeal filed without fee - docket entries and duplicate of notice mailed to the court of appeals.			
5-13-77	By Bramwell, J - Order appointing counsel filed.(for deft on appeal)			
5-23-77	Scheduling order filed received from the court of appeals that the record be filed on or before June 20, 1977.			

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

TEERA PAMON and PRAVIT
PIYACHINAVAN,

Defendants.

----- X

THE GRAND JURY CHARGES:

Bromwell J
SUPERSEDING INDICTMENT

Cr. No. 76 CR 586(S)
(T. 21, U.S.C., 8952(a),
§841(a)(1), §846; T. 18,
U.S.C., §2)

10-22-77

COUNT ONE

On or about the 31st day of August, 1976, within the Eastern District of New York, the defendants TEERA PAMON and PRAVIT PIYACHINAVAN did knowingly and intentionally possess with intent to distribute approximately 12 ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

*new
(2 kg)*

COUNT TWO

On or about the 25th day of August, 1976, within the Eastern District of New York, the defendants TEERA PAMON and PRAVIT PIYACHINAVAN did knowingly and intentionally import into the United States from Thailand approximately 12 ounces of heroin, a Schedule I narcotic drug controlled substances. (Title 21, United States Code, Section 952(a); Title 18, United States Code, Section 2).

COUNT THREE

From on or about the 11th day of June 1976, and up to and including the 31st day of August 1976, such dates being approximate and inclusive, within the Eastern District of New York, the defendants TEERA PAMON and PRAVIT PIYACHINAVAN did combine, conspire, confederate and agree together and with others known and unknown to the Grand Jury to commit an offense against the United States in violation of Title 21, United States Code, Section

841(a)(1), by conspiring to possess with intent to distribute and to distribute quantities of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 846).

COUNT FOUR

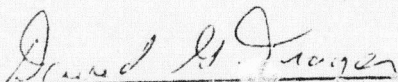
On or about the 15th day of June, 1976, within the Eastern District of New York, the defendant TEERA PAMON did knowingly and intentionally possess with intent to distribute approximately 3 ounces of heroin, a Schedule I narcotic drug controlled substances. (Title 21, United States Code, Section 841(a)(1)).

COUNT FIVE

On or about the 15th day of June, 1976, within the Eastern District of New York, the defendant TEERA PAMON did knowingly and intentionally distribute approximately 3 ounces of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

A TRUE BILL

FOREMAN



DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
: UNITED STATES OF AMERICA, : E.D.N.Y.
: :
: -against- : 76 CR. 586
: :
: PRAVIT PIYACHINAVIN. : BRAMWELL, J.
: :
-----X

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : E.D.N.Y.
:
-against- : 76 CR. 586
:
PRAVIT PIYACHINAVAN. : BRAMWELL, J.
:
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :E.D.N.Y.
:
-against- : 76 CR. 586
:
PRAVIT PIYACHINAVAN. : BRAMWELL, J.
:
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CJA 21 Authorization & Voucher for expert services	32
Supplemental Clerk's Certificate	33

1
2 with you.

3 MR. EPSTEIN: It has to be told to them. I
4 thought maybe your Honor would want to flesh it out a
5 little more, rather than give them an instruction and
6 serve the purposes of the charge.

7 THE COURT: I will leave it the way it is.

8 MR. EPSTEIN: Very well, your Honor.

9 THE COURT: Bring in the jury.

10 (Thereupon, the jury entered the courtroom at
11 9:37 A.M.)

12 THE COURT: Good morning. I will now give you
13 the charge of the Court.

14 Mr. Foreman, ladies and gentlemen of the jury:

15 We now come to the final stage of the proceedings.
16 The Court will now charge you on the law to be applied
17 to the facts in the case.

18 As you may recall, I initially gave you a
19 pre-charge as to the manner in which the case would be
20 presented to you. I told you that most of the evidence
21 in the case would come in the form of the testimony of
22 witnesses and that you are to pay special attention to
23 the manner in which the witnesses testified.

24 I believe I also instructed you that you would
25 be the judges of the facts in the case. That being

1 your sole province and that your recollection of the
2 facts, after having heard all of the evidence in the
3 case, the testimony of witnesses, and the documentary
4 proof was to control the determination of the issues.
5 At that time, I told you that I would be the judge of
6 the law. This has not changed at this stage of the
7 proceedings.

8 I will not review the facts in the case for you
9 because I am certain that with summations by the
10 attorneys, there is no need for the Court to review the
11 facts.

12 In any event, if I find there is some fact in
13 the case you may have forgotten or you don't recollect
14 or you can't agree with each other in your deliberations,
15 you can have it read back from the record and that will,
16 I am sure, refresh your memory.

17 In any event, I am the Judge of the law. You
18 must accept what I say to be the law in this case.

19 Now, the attorneys have been permitted by the
20 Court and by the rules to make opening statements and
21 summations to you. Under no circumstances are the
22 statements they have made by way of opening or by way
23 of summation is to be taken as evidence.

24 However, the Court and the law does permit you
25

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2 to take the arguments that they have proffered before
3 you and weigh those arguments and if you agree with
4 what they have said on either side of the case, you
5 may use those arguments here in your deliberations
6 and in discussing the case with each other and trying
7 to convince one another as to what the final
8 determination shall be with reference to the
9 deliberations at hand. If you feel that the arguments
10 are not commensurate with the testimony and the proof
11 in the case, you may disregard them. The arguments
12 are not evidence. You need not weigh them.

13 However, there are times when the arguments of
14 the attorneys will give you an insight as to some-
15 thing you may have missed and you may discuss that
16 portion of it if you so desire.

17 Now, of course, I also said to you that during
18 the trial, the Court will be the judge of the law;
19 likewise, as to motions, which at times we had at
20 side bar, as you may recall. That was not for the
21 purpose of keeping any of the proof from you but were
22 matters of law that were discussed between the attorneys
23 and the Court itself and should not have come before
24 you.

25 In any event, if you feel that you have

1
2 discovered by some stretch of your imagination what
3 this Court thinks as to either some of the testimony
4 or the case itself, be sure to remove that from your
5 mind because I tell you here and now, I have come to
6 no conclusion in this case, nor have I indicated to
7 you, in any way whatever, what my feelings are with
8 reference to the facts in the case or with reference
9 to the guilt or innocence of the defendant. That is
10 your province and your job. You should not try to
11 weigh what you believe the Court's impression may be.

12 You must understand that the lawyers who are
13 before you are advocates. They are advocating the best
14 case they can for the parties they represent and they
15 have a right to exercise as much forcefulness as they
16 desire in their questioning, or otherwise presenting
17 their case. I say this because this is within the
18 framework of the ordinary trial.

19 As to objections and rulings, it is the duty
20 of the attorney on each side of a case to object when
21 the other side offers testimony or other evidence
22 which the attorney believes is not properly admissible.
23 You should not show prejudice against an attorney or
24 his client because the attorney has made objections.

25 Upon allowing evidence or other testimony to be

1
2 introduced over the objection of an attorney, the
3 Court does not, unless expressly stated, indicate any
4 opinion as to the weight or effect of such evidence.

5 As stated before, the jurors are the sole
6 judges of the credibility of all witnesses, and the
7 weight and effect of all the evidence.

8 When the Court has sustained an objection to a
9 question addressed to a witness, the jury must
10 disregard the question entirely and may draw no
11 inferences from the wording of it or speculate as to
12 what the witness would have said if he had been
13 permitted to answer any questions.

14 As to statements, rulings, remarks and comments
15 of the Court during the course of the trial, no
16 statement, ruling, remark or comment which I make
17 during the course of the trial was intended to
18 indicate my opinion as to how you should decide the
19 case or to influence you in any way in your
20 determination of the facts. If at any time I have
21 made any comment regarding the facts, you are at
22 liberty to disregard it.

23 At times, I ask questions of the witnesses.
24 When I did so it was for the purpose of bringing out
25 matters which I felt should be brought out and not in

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2 any way to indicate my opinion about the facts or to
3 indicate the weight I felt you should give to the
4 testimony of the witnesses.

5 Also, you should not show prejudice toward a
6 lawyer or his client because I found it necessary to
7 admonish the lawyer during the course of the trial.
8 It is the duty of the Court to admonish an attorney
9 who either out of zeal for his cause is not in keeping
10 with the rules of evidence or procedure. You are to
11 draw no inference against the side to whom an
12 admonition of the Court may have been addressed
13 during the trial of this case.

14 In determining the facts, the jury is reminded
15 that before each member was accepted and sworn to
16 act as a juror, he or she was asked questions regard-
17 ing his or her competencies, qualifications, fairness
18 and freedom from prejudice or sympathy. On the
19 faith of those answers, the jurors were accepted by
20 the parties. Therefore, those answers are as binding
21 on each of the jurors now as they were then and
22 should remain so until the jury is discharged from the
23 consideration of this case.

24 You cannot decide that you do not like the
25 sections of the law that I will quote to you or any

1
2 other part of the charge. You have the obligation of
3 accepting the law as I charge it, just as I have the
4 obligation of accepting your findings of fact and
5 your ultimate verdict as to the guilt or innocence of
6 the defendants. It lends for predictability and
7 stability if judges throughout the country in types of
8 charges such as this charge uniformly or substantially
9 so and that juries accept it. It would be unfair for
10 you to decide this case on your own notions on what
11 the law should be and another jury decided on their
12 own notions on what the law should be. That is why
13 the obligation is a firm one and one that you should
14 understand.

15 Of course, you know by this time that this
16 case has come before you by way of an indictment
17 presented by a grand jury sitting in the Eastern
18 District.

19 That indictment charges the defendant with
20 the count I shall now read to you. Remember the
21 indictment is merely an accusation, merely a piece of
22 paper. It is not evidence and it is not proof of
23 anything.

24 The indictment reads as follows: On or about
25 the 31st day of August, 1976, within the Eastern

1 District of New York, the defendants Tera Pamon and
2 Pravit Piyachinavan did knowingly and intentionally
3 possess with intent to distribute approximately
4 12 ounces of heroin, a Schedule I narcotic drug
5 controlled substance in violation of Title 21 United
6 States Code Section 841(a)(1) and Title 18, United
7 States Code Section 2.
8

9 Count 1, which is the only count in this
10 indictment, is based on Title 21 of the United States
11 Code Section 841(a)(1) which provides in pertinent
12 part as follows:

13 It shall be unlawful for any person knowingly
14 and intentionally to distribute or possess with intent
15 to distribute a controlled substance.

16 You are instructed as a matter of law that
17 heroin is a Schedule I narcotic drug controlled
18 substance.

19 Aiding and abetting:

20 In a cause where two persons are charged with
21 the commission of a crime such as count 1 here, where
22 Pravit Piyachinavan is charged with Tera Pamon, the
23 guilt of the defendant may be established without
24 proof that he personally did every act constituting
25 the offense charged.

Count 1 of the indictment includes Title 18 of the United States Code Section 2 which states:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal. Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense or participation is willful if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done. That is to say, with bad purpose either to disobey or to disregard the law.

Aid and abet defined:

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal venture and willfully participate in it as he would in something he wished to bring about. That is to say, that he willfully seek by some act or omission of his

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2 to make the criminal venture succeed.

3 An act or omission is willfully done if done
4 voluntarily and intentionally with the specific intent
5 to do something which the law forbids or with the
6 specific intent to fail to do something the law
7 requires to be done. That is to say, with bad purpose
8 either to disobey or disregard the law.

9 You, of course, may not find any defendant
10 guilty unless you find beyond a reasonable doubt that
11 every element of the offense as defined in these
12 instructions was committed by some person or persons
13 and that the defendant participated in its commission.

14 Willfully to cause criminal acts defined:

15 In order to cause another person to commit a
16 criminal act, it is necessary that the accused
17 willfully did or willfully failed to do something
18 which by reason of the ordinary course of nature or
19 the ordinary habits of life results in the other
20 persons either doing something the law forbids or
21 failing to do something the law requires to be done.

22 An act or failure to act is willfully done if
23 done voluntarily and intentionally and with the
24 specific intent to do something the law forbids or
25 with the specific intent to fail to do something the

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2 law requires to be done. That is to say, with bad
3 purpose to either disobey or to disregard the law.

4 Mere presence is not sufficient. Mere presence
5 at a scene of a crime and knowledge that a crime is
6 being committed are not sufficient to establish that
7 the defendant aided and abetted the crime, unless you
8 find beyond a reasonable doubt that the defendant was
9 a participant and not merely a knowing spectator.

10 To aid in your determination whether a
11 defendant aided or abetted in the commission of an
12 offense, you may ask yourself these questions:

13 Did he associate himself with the venture?
14 Did he participate in it as something he wished to
15 bring about? Did he seek by his action to make it
16 succeed?

17 If he did, then he is an aider and abettor.

18 The essential elements of the offense:

19 Count 1 of the indictment charges Pavit
20 Piyachinavan knowingly and intentionally possessed
21 with intent to distribute approximately twelve ounces
22 of heroin, a Schedule I narcotic controlled substance.
23 The essential elements of this offense, each of which
24 the Government must prove beyond a reasonable doubt,
25 are, first, that the defendant Pavit Piyachinavan,

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2 did attempt to possess with intent to distribute a
3 quantity of heroin, a Schedule I narcotic controlled
4 substance, on or about August 31, 1976 within the
5 Eastern District of New York; second, that the
6 defendant Pavit Piyachinavan did so attempt to possess
7 the heroin with the specific intent to distribute;
8 third, that the defendant Pavit Piyachinavan did so
9 knowingly and intentionally.

10 As to attempt, I am instructing you as a
11 matter of law that Title 21 of the United States Code
12 Section 346 provides that any person who attempts to
13 commit the offense charged in count 1 may be found
14 guilty as though he actually committed the complete
15 offense as charged. You are instructed that the only
16 charge before you which you are to consider is
17 whether the defendant attempted to commit the offense
18 charged in count 1.

19 A person is guilty of an attempt to commit a
20 crime if acting with the kind of culpability which
21 was otherwise required for commission of the crime and
22 he purposely engages in conduct which would
23 constitute the crime if the attendant circumstances
24 were as he believes them to be.

25 Therefore, if you find that the defendant's

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2 action would have constituted the complete crime as
3 charged in count 1, if the surrounding circumstances
4 were as the defendant believed them to be, then you
5 may find the defendant guilty. In other words, if
6 you find that Mr. Piyachinavan's actions and state of
7 mind met the requisite elements for the offense
8 charged, but for the differing amount of heroin, and
9 you find the defendant believed there was a quantity
10 of heroin, then you may find Mr. Piyachinavan guilty.

11 In the indictment, it is alleged that twelve
12 ounces of heroin were involved. The evidence in the
13 case need not establish that the amount or the
14 quantity of heroin was as alleged in the indictment
15 but only that some measurable amount of a heroin drug
16 was in fact the subject of the act charged in the
17 indictment.

18 You will, of course, first ascertain whether
19 or not the substance in question is in fact heroin
20 as alleged, and in so doing, you will consider all
21 evidence in the case which may aid in the determination
22 of that issue, including the testimony of any expert
23 or chemist or other witness who may have testified
24 either to support or to dispute the allegation that
25 the substance in question is heroin as charged.

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2 As stated before, the burden is always upon the
3 prosecution to prove beyond a reasonable doubt every
4 essential element of the crime charged. Always bear
5 in mind that the law never imposes upon a defendant in
6 a criminal case the burden or duty of calling any
7 witnesses or producing any evidence.

8 Ladies and gentlemen, you will note the
9 indictment charges that the offense was committed on
10 or about a certain date. The proof may not establish
11 with certainty the exact date of the alleged offense.
12 It is sufficient if the evidence in the case
13 establishes beyond a reasonable doubt that the offense
14 was committed on a date reasonably near the date
15 alleged.

16 Regarding the indictment and the name of Tera
17 Pamon, you have heard that the indictment includes in
18 count 1 the name of one Tera Pamon. As you are of
19 course aware, Mr. Pamon is not on trial here for these
20 acts at this time.

21 You are again instructed that it is not your
22 role to conjecture as to why Mr. Pamon is not on trial
23 here. You are not to make any inferences or draw any
24 conclusions as to the reasons for the absence of
25 Tera Pamon. You are directed to consider the charges

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2 against Mr. Piyachinavan solely on the evidence before
3 you at this trial.

4 Definitions:

5 Please bear in mind the following definitions in
6 considering the essential elements of the crime
7 charged.

8 Distribute defined:

9 The term distribute means to deliver a
10 controlled substance to the possession of another
11 person, which in turn means the actual constructive or
12 attempted transfer of a controlled substance.

13 Possession:

14 The law recognizes two kinds of possession:
15 actual possession and constructive possession.

16 A person who knowingly has direct physical
17 control over a thing at a given time is then in actual
18 possession of it.

19 A person who although is not in actual
20 possession knowingly has both the power and the
21 intention at a given time to exercise dominion or
22 control over a thing, either directly or through
23 another person or persons, is then in constructive
24 possession of it.

25 The law recognizes also that possession may be

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2 sole or joint. If one person alone has actual or
3 constructive possession of a thing, possession is sole.
4 If two or more persons share actual or constructive
5 possession of a thing, possession is joint.

6 You may find that the element of possession, as
7 that term is used in these instructions, is present if
8 you find beyond a reasonable doubt that the defendant
9 had actual or constructive possession, either alone or
10 with another.

11 Knowingly defined:

12 An act is done knowingly if done voluntarily
13 and intentionally and not because ~~or~~ mistake or accident
14 or other innocent reason.

15 The purpose of adding the word knowingly was
16 to ensure that no one would be convicted for an act
17 done because of mistake or accident or other
18 innocent reason.

19 Definition of willfully to act:

20 An act is done willfully if done voluntarily
21 and intentionally and with the specific intent to do
22 something the law forbids. That is to say, with bad
23 purpose to either disobey or disregard the law.

24 Unlawfully to act:

25 Unlawful means contrary to law so to do an act

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2 unlawfully means to do willfully something which is
3 contrary to law.

4 Specific intent:

5 The crime charged in this case is a serious
6 crime which requires proof of specific intent before a
7 defendant can be convicted. Specific intent, as
8 the term implies, means more than the general intent
9 to commit the act.

10 To establish specific intent, the Government
11 must prove that a defendant knowingly did an act which
12 the law forbids, purposely, intending to violate the
13 law. Such intent may be determined from all the facts
14 and circumstances surrounding the case.

15 Intent ordinarily may not be proved directly
16 because there is no way of fathoming or scrutinizing
17 the operations of the human mind, but you may infer
18 the defendant's intent from the surrounding circum-
19 stances.

20 You may consider any statement made, an act
21 done or omitted by the defendant and all other facts
22 and circumstances in evidence which indicate his
23 state of mind.

24 Reasonable doubt:

25 Now, there are, in any case and in this one,

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2 two types of evidence from which a jury may properly
3 find the defendant guilty of a crime. One is direct
4 evidence, such as testimony of an eyewitness.

5 The other is circumstantial evidence, which is
6 proof of a chain of facts and circumstances pointing
7 to the commission of the offense.

8 As a general rule, the law makes no distinction
9 between direct and circumstantial evidence but simply
10 requires that before convicting a defendant, the jury
11 must be satisfied of the defendant's guilt beyond a
12 reasonable doubt, from all the evidence in the case.

13 A defendant is presumed innocent of the crime.
14 Thus, the defendant, although accused, begins the trial
15 with a clean slate and with no evidence against him
16 and the law permits nothing but legal evidence to be
17 presented before a jury to be presented in support of
18 any charge against the accused, so that the presumption
19 of innocence alone is sufficient to acquit a
20 defendant, unless you, the jury, are satisfied beyond
21 a reasonable doubt of the defendant's guilt after
22 careful and impartial consideration of all the
23 evidence in the case.

24 It is not required that the Government prove
25 guilt beyond all possible doubt. The test is one of

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2 reasonable doubt and reasonable doubt is doubt based
3 upon reason and common sense, the kind of doubt that
4 would make a reasonable person hesitate to act.

5 Proof beyond a reasonable doubt must therefore
6 be proof of such a convincing character that you would
7 be willing to rely and act upon it unhesitatingly in
8 the most important of your own affairs.

9 You, the jury, will remember that a defendant
10 is never to be convicted on mere suspicion or
11 conjecture. The burden is always on the prosecution
12 to prove guilt beyond a reasonable doubt. This burden
13 never shifts to a defendant.

14 The law never imposes upon a defendant in a
15 criminal case the burden or duty of calling any
16 witnesses or producing any evidence. So, if the
17 jury views the evidence in the case as reasonable,
18 permitting either of two conclusions, one of innocence,
19 the other of guilt, you, the jury, should of course
20 adopt the conclusion of innocence.

21 I have said that the defendant may be proven
22 guilty by either direct or circumstantial evidence.
23 I said that direct evidence is the testimony of one
24 who asserts actual knowledge of a fact, such as an
25 eyewitness.

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2 Also, circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the guilt
4 or innocence of a defendant.

5 You, the jury, may make common sense inferences
6 from the provable facts. It is not necessary that
7 all inferences drawn from the facts in evidence be
8 consistent only with guilt and inconsistent with
9 every reasonable hypothesis of innocence. The test is
10 one of reasonable doubt and should be based on all
11 the evidence, the testimony of witnesses, the
12 documents offered into evidence, the reasonable
13 inferences which can be drawn from the proven facts.

14 An inference is a deduction or conclusion which
15 reason and common sense lead the jury to draw from the
16 facts which have been proved.

17 You are to consider only the evidence in the
18 case, but in your consideration of the evidence, you
19 are not limited to the bald statements of the witnesses.

20 (continued next page)
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2 THE COURT (Continuing) On the contrary, you are
3 permitted to draw from the facts, which you find have
4 been proved, such reasonable inferences as seem
5 justified in light of your own experience.

6 A reasonable doubt may arise not only from the
7 evidence produced but also from a lack of evidence,
8 since the burden is upon the prosecution to prove the
9 accused guilty beyond a reasonable doubt of every
10 essential element of the crime charged. A defendant
11 has the right to rely upon the failure of the
12 prosecution to establish such proof.

13 Proof of knowledge and intent:

14 Knowledge and intent exist in the mind. Since
15 it is not possible to look into a man's mind to see
16 what went on, the only way you have for arriving at
17 a decision in these questions is for you to take into
18 consideration all the facts and circumstances shown by
19 the evidence, including the exhibit, and to determine
20 from all such facts and circumstances whether the
21 requisite knowledge and intent were present at the time
22 in question. Direct proof is unnecessary.

23 Knowledge and intent may be inferred from all
24 the surrounding circumstances. The fact of knowledge
25 may be established by direct or indirect or

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2 circumstantial evidence, just as any other fact in the
3 case.

4 One may not willfully or intentionally remain
5 ignorant of a fact important and material to his
6 conduct and thereby escape punishment. The defense of
7 lack of knowledge is not available to the defendant if
8 the jury finds from all the evidence, beyond a reason-
9 able doubt, that the defendant has a conscious purpose
10 to avoid enlightenment by closing his eyes to the
11 facts which should have caused him to investigate.

12 It is obvious that the critical question in this
13 case is whether the defendant, Mr. Piyachinavan, had
14 narcotics. You may not find the defendant guilty
15 unless you find beyond a reasonable doubt that he knew
16 the package was to contain narcotics.

17 In other words, that the defendant Piyachinavan
18 knew that the package he picked up from the Post
19 Office was supposed to contain narcotics. The fact
20 of knowledge may be established by direct or circum-
21 stantial evidence, just as any other fact in the case.
22 Knowledge may be proven by the defendant's conduct
23 since we have no way of looking into a person's mind,
24 directly.

25 Now, in this context, bear in mind that one may

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2 may not willfully and intentionally remain ignorant of
3 a fact important and material to his conduct in order
4 to escape the consequences of the criminal law. You
5 may find a defendant acted knowingly if you find that
6 either he actually knew he had narcotics or that he
7 deliberately closed his eyes to what he had every
8 reason to believe was the fact.

9 I should like to emphasize, ladies and gentlemen,
10 that the requisite knowledge cannot be established by
11 demonstrating mere negligence or even foolishness on
12 the part of the defendant.

13 Credibility of witnesses:

14 You as jurors are the sole judges of the
15 credibility of the witnesses and the weight their
16 testimony deserves and it goes without saying that you
17 should scrutinize all the testimony given, the circum-
18 stances under which each witness has testified, and
19 every matter in evidence which tends to show whether a
20 witness is worthy of belief.

21 Consider each witness' intelligence, motive and
22 state of mind, and his demeanor and manner while on the
23 stand. Consider the witness' ability to observe the
24 matters as to which he has testified and whether he
25 impresses you as having an accurate recollection of these

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2 matters. Consider also any relationship the witness
3 may bear to either side of the case, the manner in
4 which each witness might be affected by the verdict
5 and the extent to which, if at all, either witnesses
6 are supported or contradicted by other evidence in the
7 case.

8 Inconsistencies or discrepancies in the
9 testimony of a witness or between the testimony of
10 different witnesses may or may not cause the jury to
11 discredit such testimony. Two or more persons
12 witnessing an incident or a transaction may see or
13 hear differently and an innocent misrecollection like
14 failure of recollection is not an uncommon experience.
15 In weighing the effect of a discrepancy, always
16 consider whether it pertains to a matter of importance
17 or an unimportant detail and whether the discrepancy
18 results from innocent error or intentional falsehood.

19 After making your own judgment, you will give
20 the testimony of each witness such credibility, if any,
21 as you may think it deserves.

22 Another test you can use in determining the
23 truthfulness or credibility of a witness is to use
24 your own good common sense, in addition to these
25 essentials I have given you. You can use your good

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2 common sense as you do in your everyday experience
3 where you would make important decisions based upon
4 what others tell you. When you decide to either
5 accept or ignore the statements of others you use your
6 common sense. Your good judgment will say to you
7 somehow or other that whatever they say does not
8 appear to be truthful, that somehow or other you just
9 do not believe what they have said. That is your
10 ability to reason, your ability to determine the
11 truthfulness of the person you are speaking with.

12 Likewise, your common sense should be used to
13 determine the weight to be given the testimony of a
14 witness. You take that same good common sense into
15 the jury room. You do not leave it outside.

16 In addition to what I have said, use your
17 common sense as a test in exercising your good
18 judgment and in determining whether or not this
19 defendant is guilty of the crime charged. It is for
20 you to determine whether the witnesses in this case
21 have testified truthfully, whether or not they have
22 an interest in the case, what that interest may be,
23 and how great it is, and whether or not they have told
24 you falsehoods. This is all for you to determine.

25 Every witness' testimony must be weighed as to

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2 its truthfulness. If you find any witness lied as to
3 any material fact in the case, then the law gives you
4 certain privileges. One of those privileges is that
5 you have the right to disregard the entire testimony
6 of that witness. If you find, however, that you can
7 sift through that testimony to determine which of the
8 testimony is true and which was false, then the law
9 allows you to take the portions which were true and
10 weigh it and disregard those portions which were false.
11 That, again, is within your prerogative.

12 The weight of the evidence is not necessarily
13 determined by the number of witnesses testifying on
14 either side. You should consider all the facts and
15 circumstances in evidence to determine which of the
16 witnesses are worthy of greater credence. You may find
17 that the testimony of a smaller number of witnesses on
18 one side is more credible than the testimony of a
19 greater number of witnesses on the other side.

20 You are not obliged to accept the testimony,
21 either though the testimony is uncontroverted and the
22 witness is not impeached. You may decide because of the
23 witness' bearing and demeanor, or because of the
24 inherent improbability of his testimony, or for other
25 reasons sufficient to you, that such testimony is not

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2 worthy of belief.

3 The Government is not required to prove the
4 essential elements of the offense as defined in these
5 instructions by any particular number of witnesses.
6 The testimony of a single witness may be sufficient
7 to convince you beyond a reasonable doubt of the
8 existence of an essential element of the offense
9 charged, if you believe beyond a reasonable doubt
10 that the witness is telling the truth.

11 Testimony of Government officials.

12 The probable truthfulness or believability of
13 every witness is for you and for each of you to
14 decide. That, I have already instructed you.

15 The fact that such witnesses come before you
16 as Government agents should not in the least change
17 your attitude in this respect. Their testimony does
18 not deserve a greater or lesser believability simply
19 because of their official status.

20 Whether you do or do not believe any witness
21 must depend on how truthful you judge that witness to
22 be, after you have heard the testimony and formed
23 your own conclusions as to the witness' believability.

24 The effect of the failure of the accused to
25 testify:

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2 The law does not compel a defendant in a
3 criminal case to take the witness stand and testify,
4 and no presumption of guilt may be raised, and no
5 inference of any kind may be drawn from the failure of
6 a defendant to testify.

7 As stated before, the law never imposes upon a
8 defendant in a criminal case the burden or duty of
9 calling any witness or producing any evidence.

10 Opinion evidence, expert witness:

11 The rules of evidence ordinarily do not permit
12 witnesses to testify as to opinions or conclusions.
13 An exception to this rule exists as to those whom we
14 call expert witnesses. Witnesses who by education and
15 experience have become expert in some art, science,
16 profession, or calling may state an opinion as to
17 relevant and material matters in which they profess to
18 be expert, and may also state their reasons for the
19 opinion.

20 You should consider each expert opinion received
21 in evidence in the case and give it such weight as you
22 may think it deserves. If you should decide that the
23 opinion of an expert witness is not based upon
24 sufficient education and experience, or if you should
25 conclude that the reasons given in support of the

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2 opinion are not sound, or that the opinion is out-
3 weighed by other evidence, you may disregard the
4 opinion entirely.

5 Prior inconsistent statement, witness other
6 than the accused:

7 Evidence that at some other time a witness has
8 said something or has failed to say something, which
9 is inconsistent with the witness' testimony at the
10 trial, maybe considered by the jury for the sole
11 purpose of judging the credibility of the witness, but
12 may never be considered as evidence or proof of the
13 truth of any such statement.

14 Inconsistent statements or conduct:

15 The testimony of a witness may be discredited
16 or impeached by showing that he previously made
17 statements which are inconsistent with his present
18 testimony. The earlier contradictory statements are
19 admissible only to impeach the credibility of the
20 witness and not to establish the truth of these
21 statements. It is the province of the jury to
22 determine the credibility, if any, to be given the
23 testimony of a witness who has been impeached.

24 If a witness is shown knowingly to have
25 testified falsely concerning any material matter, you

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2 have a right to distrust such witness' testimony in
3 other particulars, and you may reject all the
4 testimony of that witness or give it such credibility
5 as you may think it deserves.

6 An act or omission is knowingly done if done
7 voluntarily and intentionally and not because of
8 mistake or accident or other innocent reason.

9 All available evidence need not be produced.
10 The law does not require the prosecution to call as
11 witnesses all persons who may have been present at any
12 time or place involved in the case, or who may appear
13 to have some knowledge of the matters in issue at this
14 trial. Nor does the law require the prosecution to
15 produce as exhibits all papers and things mentioned in
16 the evidence.

17 However, in judging the credibility of the
18 witnesses who have testified, and in considering the
19 weight and effect of all evidence that has been
20 produced, the jury may consider the prosecution's
21 failure to call other witnesses or to produce other
22 evidence shown by the evidence in the case to be in
23 existence and available.

24 The jury will always bear in mind that the law
25 never imposes upon a defendant in a criminal case the

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2 burden or duty of calling any witnesses or producing
3 any evidence and no adverse inferences may be drawn
4 from his failure to do so.

5 Evidence in the case, stipulations, inferences
6 permitted:

7 Statements and arguments of counsel are not
8 evidence in the case unless made as an admission or
9 stipulation of fact. When the attorneys on both sides
10 stipulate or agree as to the existence of a fact, you
11 must, unless otherwise instructed accept the
12 stipulation as evidence and regard that fact as proved.

13 Unless you are otherwise instructed, the
14 evidence in the case always consists of the sworn
15 testimony of the witnesses, regardless of who may have
16 called them and all exhibits received in evidence,
17 regardless of who may have produced them, and all
18 facts which may have been admitted or stipulated, and
19 all facts and events which may have been judicially
20 noticed, and all applicable assumptions stated in these
21 instructions.

22 Any evidence as to which an objection was
23 sustained by the Court, and any evidence ordered
24 stricken by the Court must be entirely disregarded.

25 Unless you are otherwise instructed, anything
you may have seen or heard outside the courtroom is not

1 evidence and must be entirely disregarded.

2 You are to consider only the evidence in the
3 case, but in your consideration of the evidence, you
4 must not limit it to the bald statements of the
5 witnesses. In other words, you are not limited solely
6 to what you see and hear as the witnesses testify. You
7 are permitted to draw, from facts which you find have
8 been proved, such reasonable inferences as you feel
9 are justified in the light of experience.

10 Stipulation in this case:

11 In this case, the parties have entered into
12 one stipulation which is an agreement as to certain
13 facts. The stipulated fact in this case is that the
14 defendant, Pavit Piyachinavan, has been a student in the
15 United States since 1969.

16 Judging the evidence:

17 There is nothing peculiarly different in the
18 way a jury is to consider the evidence in a criminal
19 case from that in which all reasonable persons treat
20 any question, depending upon evidence presented to
21 them. You are expected to use your good common sense,
22 consider the evidence in the case for only those
23 purposes for which it has been admitted, and give it a
24 reasonable and fair construction in the light of your
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2 common knowledge of the natural tendencies and
3 inclinations of human beings. If an accused be proved
4 guilty beyond reasonable doubt, say so. If not so
5 proved guilty, say so.

6 Keep constantly in mind that it would be a
7 violation of your sworn duty to base a verdict of
8 guilty upon anything other than the evidence in the
9 case, and remember as well that the law never imposes
10 upon a defendant in a criminal case the burden or duty
11 of calling any witnesses or producing any evidence.

12 The jury's recollection controls. If any
13 reference by the Court or by counsel in matters of
14 evidence does not coincide with your own recollection,
15 it is your recollection which should control during
16 deliberations.

17 Exclude sympathy and antipathy. In reaching
18 your verdict, you are not to be affected by sympathy
19 or antipathy for any of the parties, what the reaction
20 of the parties or of the public to your verdict may be,
21 whether it will please or displease anyone, be popular
22 or unpopular or indeed, any consideration outside the
23 case as it has been presented to you in this courtroom.

24 You should consider only the evidence, both the
25 testimony and the exhibits, find the facts from what

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2 you consider to be the believable evidence, and apply
3 the law as I now give it to you to those facts.

4 Your verdict will be determined by the conclusion
5 thus reached, no matter whom the verdict helps or hurts.

6 Punishment:

7 Now, under your oath as jurors, you cannot
8 allow a consideration of the punishment which may be
9 imposed upon the defendant, if convicted, to influence
10 your verdict in any way or in any sense enter into
11 your deliberations. The duty of imposing sentence
12 rests exclusively upon the Court. Your function is to
13 weigh the evidence in the case and to determine the
14 guilt or innocence of the defendant solely upon the
15 basis of such evidence and the law.

16 You are to decide the case upon the evidence,
17 and the evidence alone, and you must not be influenced
18 by any assumption, conjecture, or sympathy, or any
19 inference not warranted by the facts until proven to
20 your satisfaction.

21 Unanimous verdict:

22 Now, in this type of case, there must be a
23 unanimous verdict. That means all twelve of you must
24 agree and it goes without saying that it becomes
25 incumbent upon you to listen to one another and to

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2 argue out the points among yourselves, in order to
3 determine, in a good conscience, whether your fellow
4 jurors' argument is one commensurate with yours or
5 whether at least you can with good conscience agree
6 with him or her.

7 You have no right to be stubborn and idly sit
8 by and say I am not talking to anyone. I am not going
9 to discuss it because people with common sense ability
10 to reason must communicate. They must communicate
11 their thoughts. So anything which appears in the
12 record and about which one of you may not agree, talk
13 it out amongst yourselves and if then you can't agree
14 as to what is in the record, well, you can ask the
15 Court to have that portion of the testimony read back
16 to you. You may do so by knocking on the door and
17 giving a note in writing to the United States Marshal,
18 who will then present to the Court, and I will then
19 bring you into the courtroom.

20 The Foreman will preside over your deliberations
21 and will be your spokesman here in court.

22 As to the form of verdict, it is not guilty
23 or guilty.

24 Now, at this time, the Court will discharge the
25 alternate jurors, No. 1 and 2. They are discharged

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2 with the thanks of the Court and the Court appreciates
3 your cooperation and assistance in connection with
4 this case. You have completed your service, so you
5 can go home. You may leave now and take your things
6 out.

7 The Court will speak to the attorneys at side
8 bar.

9 (Thereupon, a side bar discussion commenced.)

10 THE COURT: All right, any exceptions to the
11 charge?

12 MR. ADLERSTEIN: No, your Honor.

13 MR. EPSTEIN: Your Honor, I have three
14 exceptions. I object to the portion of the charge
15 about deliberately closing their eyes in order to
16 avoid gaining certain knowledge.

17 I object to your Honor charging the jury on
18 aiding and abetting, and also that portion of the
19 charge to which I objected earlier this morning, about
20 something being unlawful to act really being contrary
21 to law. I have no other exceptions.

22 THE COURT: Okay.

23 (Thereupon, the side bar discussion terminated.)

24 THE COURT: The Court will send into the jury
25 room, for the jury to use during deliberations, the

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2 exhibits which are in evidence. The Clerk will swear
3 in the marshals.

4 (Thereupon, the marshals were duly sworn by the
5 Clerk of the Court.)

6 The exhibits?

7 MR. ADLERSTEIN: If we could approach the side
8 bar for just a moment --

9 THE COURT: All right.

10 (Thereupon, a side-bar discussion was held.)

11 MR. ADLERSTEIN: I redacted the lab report to
12 include only the portion of it relevant to the lab
13 chemist, by the chemist.

14 MR. EPSTEIN: You are talking about
15 Government's Exhibit 6 in evidence?

16 MR. ADLERSTEIN: I'm talking about the two
17 packages, the package of lactose and heroin. This is
18 a redacted copy which is in evidence, which the
19 chemist testified to and has nothing but that
20 information. As your Honor recalls, we were asked to
21 redact the really relevant portions and I have done
22 so.

23 MR. EPSTEIN: We can mark it Court Exhibit 6a
24 in evidence.

25 THE COURT: Okay, mark this 6a.

1
2 MR. ADLERSTEIN: The heroin, I have got to get
3 out of the safe and I have to get the package
4 upstairs. I thought it was 10:00 o'clock and not
5 9:30.

6 MR. EPSTEIN: Does he have to get the heroin?

7 THE COURT: It's one of the exhibits.

8 MR. EPSTEIN: All right, Exhibit 4 is the
9 delivery slip.

10 THE COURT: Okay?

11 MR. EPSTEIN: Thank you, your Honor.

12 (Thereupon, the side-bar discussion was
13 terminated.)

14 THE COURT: All right, the jury may retire for
15 deliberations and the exhibits will be brought into
16 the jury room.

17 (Thereupon, the jury was dismissed at the time
18 noted, 10:34 A.M.)

19 THE CLERK: One document marked Government's
20 Exhibit 6a in evidence.

21 MR. ADLERSTEIN: Your Honor, I'll have the
22 other exhibits up within five minutes.

23 THE COURT: All right, and give them to the
24 marshal and he can give them to the jury. All right,
25 we will take a short adjournment.

1 (Time noted: 10:35 A.M.)

2 THE CLERK: Note from jury marked Court's
3 Exhibit 1.

4 THE COURT: All right, this is Court Exhibit 1.
5 It's a note from the jury.

6 "Please interpret the charge. Does intent to
7 distribute automatically go with the charge of
8 possession?"

9 Now, the answer to that, as I have it at this
10 point, no. It's a separate element of the offense to
11 be separately considered. In order for the
12 defendant to be found guilty, the jury must find each
13 of the individual elements of the offense beyond a
14 reasonable doubt.

15 At this point, my inclination is to read the
16 elements of the offense, together with the attempt
17 charge that we have.

18 Now, there is a further question:

19 "What determines intent to distribute; the
20 amount of drug?"

21 The intent to distribute, the defendant's
22 state of mind can be determined by all the surrounding
23 circumstances. I might at that point read knowledge
24 and intent, proof of knowledge and intent for the jury.

25 The second part as to the amount of drugs, the

1 amount of drugs is one of the circumstances to be
2 weighed by the jury in determining the issue of intent
3 to distribute but, of course, it is not the sole
4 circumstance to be considered.

5 Further, from this slip opinion I have, United
6 States v. Skidowsky (phonetic), Second Circuit,
7 September 1976, whether such an inference may be
8 drawn depends upon the surrounding circumstances,
9 including the nature of the relationship, whether it
10 is commercial rather than personal, the quantity of
11 drugs, what it is for, if it is too large for personal
12 use only, the number of persons involved in the
13 conduct on the part of the defendant, but that is
14 what is before the Court. You want to look at it?

15 MR. EPSTEIN: Just for a moment, thank you,
16 your Honor.

17 MR. ADLERSTEIN: They ask your Honor
18 specifically, I see here, the amount of drugs. I
19 think your Honor ought to instruct them, as I think
20 you will, that the amount of drugs is one of the
21 elements to consider to determine whether there was an
22 intent to distribute. I believe there is another
23 case your Honor might wish to look at; United States
24 v. Nacarino, where the Court of Appeals states the
25

1 intention of distribution can be properly inferred
2 from possession of greater than the amount that would
3 normally be used by an individual user.

4 THE COURT: Yes, Mr. Epstein?

5 MR. EPSTEIN: I have nothing to add. I have
6 just looked at the note. I concur with what your
7 Honor plans to tell the jury.

8 THE COURT: I could also give them a definition
9 of distribution and the definition of specific intent.
10 I can give them those two, also, if it will help.

11 MR. EPSTEIN: I think it might. If the jury
12 has heard what they want to hear, they will tell the
13 Court. If it's beyond what they wish to be told,
14 hold them for a little longer and it might obviate a
15 second note coming out.

16 THE COURT: All right, I will look at that
17 Nacerino.

18 MR. ADLERSTEIN: The Nacarino case came down
19 in '74. It's either N-a or N-o-c-e-r-i-n-o. It
20 probably doesn't add very much to what his Honor has
21 already determined to do.

22 THE COURT: Off the record.

23 (Thereupon, an off-the-record discussion was
24 had.)

25 THE COURT: All right, bring in the jury.

(Thereupon, the jury entered the courtroom at

1 12:50 p.m.)

2 THE COURT: Ladies and gentlemen, the Court
3 has been quite busy since you have been out and
4 actually, I would have brought you in sooner but I was
5 so busy I haven't had a chance to do that, and I
6 received the questions which you have posed to the
7 Court, and I have gone over them for the most part and
8 I am prepared to answer them, but what I think I'll
9 do, I think I'll have the Clerk, have the Marshal
10 take you to lunch and after you come back from lunch
11 I will give you the instructions which you have
12 requested in this note that has been sent by you to
13 the Court.

14 So, I'll have the marshal take you out to
15 lunch and after you come back, I'll further instruct
16 you in connection with this case.

17 Now, what I must tell you, while you are aware
18 from the jury room, please do not discuss the case.
19 While you are having lunch, please do not discuss the
20 case. Do not discuss the case until you have returned
21 to the jury room and all jurors are present, and then
22 you will deliberate on the case. So, the marshal
23 make take the jury out to lunch.

24 (Thereupon, the jury left the courtroom.)

25 MR. ADLERSTEIN: May I just add one thing?

1 THE COURT: Yes.

2 MR. ADLERSTEIN: It is my position that your
3 Honor should include in the instruction, if you will
4 allow what the jury has asked for, it is not the
5 amount possessed that should be a factor but the
6 amount the defendant attempted to possess.

7 THE COURT: I think that will be in what I do.

8 Mr. Epstein, anything?

9 MR. EPSTEIN: No, your Honor, I have nothing
10 at this time.

11 THE COURT: Thank you.

12 MR. EPSTEIN: Does your Honor wish that we stay
13 in the courtroom until the jury leaves the jury room?

14 THE COURT: The marshals will keep them
15 separate. You may go down now.

16 MR. ADLERSTEIN: What time do you wish us back
17 in the courtroom?

18 THE COURT: 2:15; they won't be back before
19 that. All right?

20 MR. EPSTEIN: Thank you very much.

21 (Thereupon a luncheon recess was taken at
22 12:55 p.m.)

23 * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PRAVIT PIYACHINAVAN, et al.,
Defendants.

NOTICE OF MOTION TO SUPPRESS
EVIDENCE AND STATEMENTS

76 Cr. 586

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GILBERT EPSTEIN, ESQ., the defendant PRAVIT PIYACHINAVAN, will move by and through his counsel, JAY GOLDBERG, ESQ., before the HON. HENRY BRAMWELL, United States District Judge, in the United States Courthouse, Brooklyn, New York, at a date and time to be selected by the Court for an Order suppressing as evidence a quantity of heroin seized on or about August 26, 1976 and statements allegedly made by the defendant on August 31, 1976, pursuant to Rule 41(f) of the Federal Rules of Criminal Procedure.

Dated: New York, New York
October 19, 1976

Yours, etc.,

JAY GOLDBERG
Attorney for Defendant
PRAVIT PIYACHINAVAN
Office & P. O. Address
299 Broadway
New York, New York 10007
(212) 374-1040

GILBERT EPSTEIN
Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

PRAVIT PIYACHINAVAN, et al.,

Defendants.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

GILBERT EPSTEIN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the United States District Court for the Eastern District of New York, and I am associate counsel with JAY GOLDBERG, ESQ., the attorney of record for the defendant, PRAVIT PIYACHINAVAN.

2. This affidavit is being submitted in support of the defendant's motions to suppress approximately seven (7) ounces of heroin, and statements that he made subsequent to his arrest by Drug Enforcement Administration (DEA) Agents.

3. All statements herein are on information and belief, unless otherwise stated.

AIRPORT SEARCH

4. The heroin which forms the basis for the indictment of the defendant, PRAVIT PIYACHINAVAN, was seized at JOHN F. KENNEDY INTERNATIONAL on August 26, 1976 by United States Customs officers. The continuous refusal of the Government to turn over a witness list has made it impossible to interview the agents involved,

and determine whether or not this was a "border search", but it is unquestionably a warrantless seizure.

The package containing the heroin was contained in a "letter" rather than a "package". Postal regulations establish that international letter class mail shall not exceed four pounds 39 C.F.R. §22.1(b), c(1) (1975). Thus, assuming this to be a border search, as stated in United States v. Sohnen, 298 F.Supp 51, 54-55 (E.D.N.Y., 1969), packages may be inspected under the border search exception, but letters may not.

A border search conducted by a public official must be reasonable. United States v. Doe, 472 F.2d 982, 984 (2d Cir., 1973); United States v. Caraway, 474 F.2d 25.31 (5th Cir., 1973), and there is no indication that this search was based on anything more than a mere whim, since the seizure made by Customs was made independently of any investigation conducted by the DEA. In a situation similar to this, the United States Court of Appeals for the District of Columbia in United States v. Ramsey, 538 F.2d 415 (C.A.D.C., 1976), held that letters in international mail containing heroin that were opened by a customs inspector without a search warrant were seized in violation of the First and Fourth Amendments. Under the facts of this seizure, the Government has not satisfied it's burden in showing that this was a reasonable search.

THE SEARCH WARRANT
AND AFFIDAVIT

The affidavit submitted in support of the search warrant does not set forth a sufficient basis for showing probable cause to

search the upstairs apartment at 25-42 23rd Street, Queens. The search warrant for the upstairs floor of the two-family dwelling at 25-42 23rd Street, was supported by an affidavit that stated:

"3. Observation by agents of the Drug Enforcement Administration of an individual picking up the above-described package at the United States Post Office servicing the above-described premises and carrying said package on August 31, 1976 to such premises."

The premises in question is a two-story dwelling, and to enter the premises you open the outer door to gain entry to a vestibule, and then you open a second floor to enter the lower lobby floor. It is only after passing through this second door that you come to a flight of stairs leading to the second floor apartment and the door to the first floor apartment is behind the stairs. The affidavit makes no reference as to which apartment the defendant was seen to enter on the 31st of August. The only information in the affidavit indicating that it is the second floor rather than the first floor, that is to be searched is the second paragraph which states:

"2. Investigation by the Drug Enforcement Administration has disclosed that a citizen of Thailand resides at the upstairs floor of the above-described premises."

There is no statement in the affidavit setting forth the basis for this information. It is merely an unsupported allegation

in the warrant giving no source for this information, nor stating where the information comes from. There is nothing in that paragraph that would allow the Magistrate to judge the validity of a conclusion that a citizen of Thailand resides on the upstairs floor. A Magistrate could give no consideration to the conclusion that a citizen of Thailand lived on the second floor.

The statement in paragraph three that someone entered the premises carrying the package seized on August 26th, makes no reference to which of the two apartments in that building the individual entered.

"A simple assertion of police suspicion is not itself a sufficient basis for a Magistrate's finding of probable cause, we do not believe it may be used to give additional weight to allegations that would otherwise be insufficient." Spinelli v. United States, 393 U.S. 410, 418-419 (1969)

Thus, the affidavit does not afford a sufficient basis for determining that probable cause existed to search the upstairs apartment at 25-42 23rd Street, Queens.

PIYACHINAVAN'S POST-ARREST
STATEMENTS

The defendant, PIYACHINAVAN, was illegally arrested, based upon the illegality of the search warrant for the premises at 25-42 23rd Street, Queens, and it was this illegal arrest that led to the statements by my client.

"In order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broken, Wong Sun requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it will be 'sufficiently an act of free will to purge the primary taint...the

Miranda warnings, alone and per se, cannot always make the act sufficiently a product of free will to break for Fourth Amendment purposes, the causal connection between the illegality and the confession. They cannot assure in every case that the Fourth Amendment violation has not been unduly exploited." Brown v. Illinois, 422 U.S. 590, 602, 603 (1975)

The defendant, PIYACHINAVAN, would not have made the incriminating statements attributed to him had it not been for his illegal arrest and subsequent detention. Darwin v. Connecticut, 391 U.S. 346, 349 (1968).

My client was induced to make this statement by the psychological pressure placed upon him by the Government's promise to "free him" if he would cooperate. Daniels v. Nelson, 453 F.2d 340, 342 (9th Cir., 1972).

Subsequent to his arrest, my client requested that he see a lawyer. The agents initially told him "later, later", and when he asked the Assistant U.S. Attorney for counsel, he was told that he would get one in court. United States ex rel. Williams v. Towney, 467 F.2d 1248, 1252 (7th Cir., 1972).

WHEREFORE, it is respectfully requested that an Order issue suppressing as evidence seven (7) ounces of heroin and the defendant's post-arrest statements.

GILBERT EPSTEIN

Sworn to before me this
day of October, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

PRAVIT PIYACHINAVAN, et al.,
Defendants.

STATE OF NEW YORK)
 :ss.:
COUNTY OF NEW YORK)

PRAVIT PIYACHINAVAN, being duly sworn, deposes and says:

1. That I am the defendant in the above-named lawsuit and I am making this affidavit in support of my motion to suppress seven ounces of heroin seized on August 31, 1976, and statements made by me after my arrest.

2. I am making these statements with the understanding that they cannot be used against me at my trial.

3. I spoke to TEERA PAMON on Sunday night, August 29, 1976, and he invited me to come over to his house, which I did, on Monday evening, August 30, 1976.

4. On Monday evening, PAMON gave me the keys to his house and asked me to stay for several days as his guest.

5. PAMON resided in the upstairs apartment at 25-42 23rd Street, Astoria, Queens.

6. On Tuesday morning, I went to the mailbox and there was a slip of paper to pick up a package for PAMON's roommate, SHENSOOYA.

7. I went to the post office and gave the slip to a clerk who gave me a package.

8. I returned home to 25-42 23rd Street with the package, and I remained at home until the police came and arrested me.

9. I was arrested at about 11:30 a.m. on Tuesday, August 31, 1976.

10. I was initially questioned by agents to whom I denied knowing that the package contained or was supposed to contain heroin. I also told the agents I wanted a lawyer, and they said "later, later".

11. Sometime between 4:00-5:00 p.m. that day, I was taken to see an Assistant United States Attorney. After, the agents told me I would be put in jail for ten to fifteen years, but not if I cooperated and told them I knew what was in the package. I told them I knew heroin was in the package. They told me if I cooperated I would go free. I also asked the Assistant for a lawyer, and he said the Judge would give me a lawyer.

PRAVIT PIYACHINAVAN

Sworn to before me this
day of October, 1976

OCT 14 1976

UNITED STATES OF AMERICA

Docket No.

vs.

Case No.

THE UPSTAIRS FLOOR OF ONE
TWO FAMILY HOUSE, PREMISES
KNOWN AS 25-42 23RD STREET,
ASTORIA, QUEENS, NEW YORK

SEARCH WARRANT

To Any Special Agent of the Drug Enforcement Administration

Affidavit(s) having been made before me by WILLIAM CAMES, Special Agent
Drug Enforcement Administration

that he has reason to believe that { ~~on the person of~~
on the premises known as } the upstairs floor of
one two family house,
25-42 23rd Street, Astoria,
Queens, New York

in the Eastern District of New York

there is now being concealed certain property, namely

here describe property

approximately one hundred and fifty three (153) grams of heroin
hydrochloride, a schedule I narcotic drug controlled substance
in violation of Title 21, United States Code, Section 841(a)(1).

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of _____
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
{ at any time in the day or night* }
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
_____ as required by law.

Federal judge or magistrate

BEST COPY AVAILABLE

Dated this 31st day of August, 1976

VINCENT A. CHIOGGIO

OCT 14 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

-against-

THE UPSTAIRS FLOOR OF ONE TWO
FAMILY HOUSE, PREMISES KNOWN
AS 25-42 23RD STREET, ASTORIA,
QUEENS, NEW YORK.

AFFIDAVIT FOR A
SEARCH WARRANT

Title 21, U.S.C.
§841(a)(1)

- - - - - X

EASTERN DISTRICT OF NEW YORK, SS:

WILLIAM OAKES, being duly sworn, deposes and says that he is a Special Agent employed by the Drug Enforcement Administration of the Department of Justice, duly appointed according to law and acting as such.

Upon information and belief, there is approximately one hundred and fifty three (153) grams of heroin hydrochloride, a schedule I narcotic drug controlled substance, at the upstairs floor of one two family house, premises known as 25-42 23rd Street, Astoria, Queens, New York. The presence of said narcotics is in violation of Title 21, United States Code, Section 841(a)(1).

The source of your deponent's information and the grounds for his belief are:

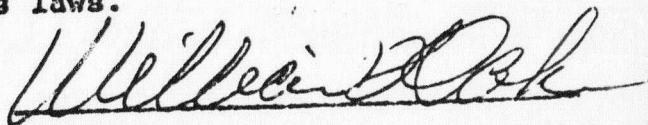
1. Seizure by United States Customs Officers on August 26th 1976, of a package that had arrived at John F. Kennedy Airport by mail from Bangkok, Thailand and addressed to one Shensooya/K, 25-42 23rd Street,

Astoria, Queens. A drug field test revealed such package to contain approximately one hundred and fifty three (153) grams of heroin hydrochloride, a schedule I narcotic drug controlled substance.

2. Investigation by the Drug Enforcement Administration has disclosed that a citizen of Thailand resides at the upstairs floor of the above described premises.

3. Observation by agents of the Drug Enforcement Administration of an individual picking up the above described package at the United States Post Office Servicing the above described premises, and carrying said package on 8/31/76 to such premises.

WHEREFORE, your deponent respectfully requests that a search warrant issue to your deponent or to any Special Agent of the Drug Enforcement Administration authorizing him or them to enter with proper assistance at any time of the day or night, the premises known as the upstairs floor of one two family house, premises known as 25-42 23rd Street, Astoria, Queens, New York, a private dwelling, and there to search and seize a quantity of narcotic controlled substances, the cash proceeds from the sale and distribution of narcotic controlled substances, documents relating thereto, and any paraphernalia associated with distribution and use of narcotics, all of which were used in violation of narcotics laws.



Sworn to before me this
31st day of August 1976

VINCENT A. CATOGGIO

United States Magistrate
Eastern District of New York

P63

A TRUE COPY

OCT 14 1976

REPORT OF INVESTIGATION

PAGE 1 OF 1

FILE TITLE PAMON, Teera	IDENTIFIER DA4-H2	FILE NUMBER C1-75-0440 (Gp.11)
PROGRAM CODE		
☒ ACTIVE ☐ CLOSED ☐ REQUESTED ACTION COMPLETED ☐ ACTION REQUESTED FROM	OTHER OFFICERS S/A William D. Oakes	CROSS FILE ☐ ☐ ☐ ☐ ☐
REPORT BY Dwight S. Rabb Special Agent New York, New York September 21, 1976		

REPORT ON
Interview of Pravitt PIYACHINAVAN by AUSA Clayman, witnessed by S/A's Rabb and Oakes.

DETAILS:

- On August 31, 1976 PIYACHINAVAN was interviewed by Assistant United States Attorney Charles Clayman at the U.S. District Courthouse, Eastern District of New York, in the presence of Special Agent Dwight Rabb and Special Agent William Oakes.
- PIYACHINAVAN was read his Miranda Rights in English by AUSA Clayman prior to any questioning. PIYACHINAVAN stated in English that he understood his rights and wished to waive them.
- PIYACHINAVAN told AUSA Clayman that he has known Teera PAMON for five years and that they had been roommates in college. PIYACHINAVAN met PAMON the week prior to August 31, 1976 at a party and PAMON asked him to come to PAMON's apartment on Sunday, August 29, 1976 which PIYACHINAVAN did. PIYACHINAVAN said that PAMON told him he was expecting a package in the mail and "dope" would be in the package. PAMON stated he would pay PIYACHINAVAN \$200.00 to pick the package up from the Post Office and PIYACHINAVAN agreed to do so.
- PIYACHINAVAN also stated that PAMON said he knew a lot of big "dope" dealers, but PAMON would not tell him more until after the "dope" in the mail arrived. PIYACHINAVAN reiterated this statement several times.
- PIYACHINAVAN also admitted that he picked up the package at the post office that morning (8-31-76) and that he knew the package contained heroin.

PHYSICAL DESCRIPTIONS:

- Pravitt PIYACHINAVAN - (No NADDIS number available) - DOB: 3-08-49, Thai male, 5'9" tall, 130 pounds with black hair and black eyes.
- Teera PAMON, NADDIS #410008.

REGION	SIGNATURE (Agent) <i>Dwight S. Rabb</i>	DATE
DISTRICT	Dwight S. Rabb, Special Agent	
OTHER	APPROVED (Name and Title) <i>John J. Coleman</i>	DATE 8-27-76
	John J. Coleman, Group Supervisor	

DEA Form -6
(Aug 1973)

OFFICIAL USE ONLY

Drug Enforcement Administration
Department of Justice

25 9.2.76

This report is the property of the Drug Enforcement Administration.
Neither it nor its contents may be disseminated outside the agency to which loaned.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

76 Cr. 586(S)

PRAVIT PIYACHINAVAN, et al.,

Defendant.

MEMORANDUM OF LAW

Submitted by .

JAY GOLDBERG
Counsel for Defendant PIYACHINAVAN
299 Broadway
New York, New York 10007
(212) 374-1040

GILBERT EPSTEIN
Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

PRAVIT PIYACHINAVAN,

Defendant.

MEMORANDUM OF LAW

STATEMENT OF FACTS

On or about August 25, 1976, a package addressed to SHENSOOYA/K, residing at 25-42 23rd Street, Astoria, Queens, and originating in Thailand was diverted by the U. S. Postal Service to the United States Customs Service. The package was "screened" by using a dog and subsequent to that "screening" a quantity of heroin was discovered inside a photo album contained within the package. This package was delivered to the Astoria Station Post Office at the end of August, 1976. On August 31, 1976, a slip, addressed to SHENSOOYA/K at 25-42 23rd Street, was placed in the mailbox at that address. The slip of paper was picked up at that address by Mr. PIYACHINAVAN who took it to the Post Office, and retrieved the package

addressed to SHENSOOYA/K. Upon returning to 25-42 23rd Street with the package, Mr. PIYACHINAVAN went to Mr. PAMON's second floor apartment where he was arrested at 11:30 A.M. on August 31, 1976.

The defendant, PIYACHINAVAN, opened the door to apartment, admitting the DEA agents, who placed him under arrest and elicited statements from him prior to advising him as to his constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966). PIYACHINAVAN was then driven to DEA Headquarters on West 57th Street, New York, New York, where, upon being advised of his constitutional rights he requested the assistance of an attorney. Later, upon being removed to the United States Courthouse in Brooklyn, New York, PIYACHINAVAN was taken to Assistant United States Attorney CLAYMAN's office to be interviewed about his knowledge of the case and his participation in it. After renewing his request for an attorney, he was told that he would be assigned counsel by the Magistrate, and that he was facing ten to fifteen years in prison and it would be better if he cooperated. At this point, without counsel present, PIYACHINAVAN made incriminating statements.

POINT I

THE POST-ARREST STATEMENTS WERE OBTAINED
IN VIOLATION OF THE DEFENDANT'S CONSTITU-
TIONAL RIGHTS

Upon entering the second floor apartment at 25-42 23rd Street and placing the defendant, PRAVIT PIYACHINAVAN, under arrest, the agents were required to advise the defendant, PIYACHINAVAN, of his constitutional rights. Orazca v. Texas, 394 U.S. 324 (1969). The failure of the agents to advise PIYACHINAVAN of his constitutional rights in the apartment on 23rd Street deprives the prosecution of the right to use those statements secured in the absence of those procedural safeguards designed to secure the privilege against self-incrimination. Miranda v. Arizona, 384 U.S. 436, 444, 445 (1966).

Upon arriving at DEA Headquarters on 57th Street, the defendant, PIYACHINAVAN, was advised of his constitutional rights and requested the assistance of counsel. In this circuit it is clear that once a request for counsel is made all questioning must cease until the accused has had the opportunity to consult with an attorney.

In United States v. James, 493 F.2d 323, 325 (2d Cir., 1974), the Court of Appeals in discussing Miranda, supra, and the limitations imposed on the government by the exercise of Fifth Amendment rights, stated:

"Once he asked for and stated his desire to consult with counsel, all questioning should have ceased until he was assigned counsel and given an opportunity for full consultation.

'If the individual states that he wants an attorney, the interrogation must cease until an attorney is present' Miranda v. Arizona, supra, 384 U.S. at 474."

See also United States v. Clark, 499 F.2d 802, 807 (4th Cir., 1974); United States v. Davis, 344 F.Supp. 328 (S.D.N.Y., 1972).

After concluding their interrogation of the accused at DEA Headquarters, he should have been taken before a United States Magistrate for the assignment of counsel and arraignment. It was a denial of due process under Rule 5 of the Federal Rules of Criminal Procedure to take the accused, after he requested the assistance of counsel, before an Assistant United States Attorney in a last effort to extract an incriminating statement from him. The last minute interview of an uncounseled defendant with the prosecutor, to elicit an admission or a confession from the accused constitutes an "unreasonable delay" under Rule 5 of the Federal Rules of Criminal Procedure. United States v. Durall, 537 F.2d 15, 23-24 (2d Cir., 1976). The prosecutor's reference to the possible sentence that the accused faced and the fact that he would do better "if he cooperated" served to render the statements made by the accused involuntary. United States v. Arnedo-Sarmiento S.A., 305, 315, 2d Circuit, decided October 28, 1976.

POINT II

THE AFFIDAVIT SUBMITTED IN SUPPORT OF THE
SEARCH WARRANT FAILED TO SET FORTH ANY
FACTS TO SUPPORT A REASONABLE BELIEF THAT
CONTRABAND WAS IN THE SECOND FLOOR APART-
MENT

The affidavit prepared by the Drug Enforcement Administration in support of their application for a search warrant for the second floor premises at 25-42 23rd Street, Astoria, Queens contains the following recitation:

"2. Investigation by the Drug Enforcement Administration has disclosed that a citizen of Thailand resides at the upstairs floor of the above-described premises".

The facts that support this conclusion were never revealed to the United States Magistrate who issued the search warrant and, therefore, there was no probable cause to search the second floor apartment at 25-42 23rd Street.

There is no statement in the affidavit showing the source of the affiant's statement that a Thai national resides on the second floor or that the contraband sought was on the second floor.

In United States v. Karathanos, 531 F.2d 26, 29-31 (2d Cir., 1976) the Court of Appeals held:

"The purpose of the two-pronged test thus enunciated in Aguilar and Spinelli is, of course, to assume that the magistrate will not function merely as a rubber stamp but will issue search warrants only when the facts are sufficient to satisfy a reasonably prudent detached and neutral person that a crime is being committed or evidence of it kept on the premises to be searched and that the informant's information has been obtained by him in a reasonably reliable way rather than through neighborhood gossip, conjecture or mere

suspicion...to infer that the informant reached his conclusion in a reliable manner rather than in an unreliable manner would be to permit a warrant to issue on the basis of a degree of speculation proscribed by the Aquilar-Spinelli test....".

In this case, a Magistrate could only conjecture about the manner in which the informant reached his conclusion about the occupancy of the second floor apartment.

The statement that a Thai national resided in the second floor apartment at 25-42 23rd Street is, "but a bald and unilluminating assertion of suspicion that is entitled to no weight in appraising the Magistrate's decision." United States v. Spinelli, 393 U.S. 410, 414 (1969).

The affidavit prepared to support the search warrant moreover, makes no reference to any knowledge or information that the contraband sought was in the second floor apartment.

POINT III

THE STATEMENTS MADE BY THE DEFENDANT
PIYACHINAVAN WERE TAINTED BY THE
ILLEGAL SEARCH OF THE SECOND FLOOR
APARTMENT AT 25-42 23rd STREET

It has been held by the Supreme Court that the recitation of Miranda warnings to an illegally arrested person will not allow the introduction of those statements into evidence. Brown v. Illinois, 422 U.S. 590, 603-04 (1975); United States v. Karathanos, supra, 531 F.2d at 35.

In this case, there is a close connection between the initial illegal search, subsequent arrest and the post-arrest statements made by PRAVIT PIYACHINAVAN. The exclusionary prohibition extends as well to the indirect as the direct products of such invasion Wong Sun v. United States, 371 U.S. 471, 484 (1963).

POINT IV

STANDING TO OBJECT TO THE AIRPORT
SEIZURE OF THE PACKAGE ADDRESSED
TO SHEENSOOYA/K

In Count II of the Indictment, PRAVIT PIYACHINAVAN is charged with having imported heroin into the United States on August 25, 1976. In order to prove this charge, the government will have to prove that Mr. PIYACHINAVAN exercised some degree of dominion or control over the items seized on August 25, 1976. The government can not claim that the defendant exercised sufficient dominion and control over the items seized to make him guilty as an importer of contraband yet lack sufficient interests to deprive him of standing to suppress under the Second Count. Jones v. United States, 362 U.S. 257 (1960) The government will have to show that the defendant at least "constructively possessed" the contraband seized on August 25, 1976 in order to convict him under Count II and this "constructive possession" will suffice to give the defendant standing to suppress the items which form the basis of the Second Count. Brown v. United States, 411 U.S. 223, 229 fn. 4 (1973).

Respectfully submitted,

JAY GOLDBERG

GILBERT EPSTEIN
Of Counsel

OCT 14 1976

UNITED STATES OF AMERICA

Docket No.

VS.

Case No.

THE UPSTAIRS FLOOR OF ONE
TWO FAMILY HOUSE, PREMISES
KNOWN AS 25-42 23RD STREET,
ASTORIA, QUEENS, NEW YORK

SEARCH WARRANT

To Any Special Agent of the Drug Enforcement Administration

Affidavit(s) having been made before me by WILLIAM GAMES, Special Agent
Drug Enforcement Administration

that he has reason to believe that { ~~on the person of~~
on the premises known as } the upstairs floor of
one two family house,
25-42 23rd Street, Astoria,
Queens, New York

in the Eastern District of New York

there is now being concealed certain property, namely

here describe property

approximately one hundred and fifty three (153) grams of heroin
hydrochloride, a schedule I narcotic drug controlled substance
in violation of Title 21, United States Code, Section 841(a)(1).

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of _____
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
at any time in the day or night* there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
_____ as required by law.

Federal judge or magistrate

Dated this 31st day of August 1976

VINCENT A. CAROGGIO

OCT 14 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

THE UPSTAIRS FLOOR OF ONE TWO
FAMILY HOUSE, PREMISES KNOWN
AS 25-42 23RD STREET, ASTORIA,
QUEENS, NEW YORK.

AFFIDAVIT FOR A
SEARCH WARRANT

Title 21, U.S.C.
§841(a)(1)

----- X

EASTERN DISTRICT OF NEW YORK, SS:

WILLIAM OAKES, being duly sworn, deposes and says that he is a Special Agent employed by the Drug Enforcement Administration of the Department of Justice, duly appointed according to law and acting as such.

Upon information and belief, there is approximately one hundred and fifty three (153) grams of heroin hydrochloride, a schedule I narcotic drug controlled substance, at the upstairs floor of one two family house, premises known as 25-42 23rd Street, Astoria, Queens, New York. The presence of said narcotics is in violation of Title 21, United States Code, Section 841(a)(1).

The source of your deponent's information and the grounds for his belief are:

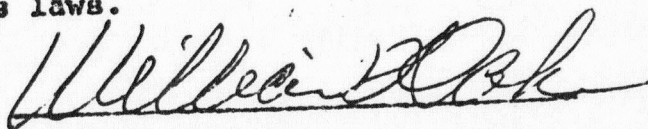
1. Seizure by United States Customs Officers on August 26th 1976, of a package that had arrived at John F. Kennedy Airport by mail from Bangkok, Thailand and addressed to one Shensooya/K, 25-42 23rd Street,

Astoria, Queens. A drug field test revealed such package to contain approximately one hundred and fifty three (153) grams of heroin hydrochloride, a schedule I narcotic drug controlled substance.

2. Investigation by the Drug Enforcement Administration has disclosed that a citizen of Thailand resides at the upstairs floor of the above described premises.

3. Observation by agents of the Drug Enforcement Administration of an individual picking up the above described package at the United States Post Office Servicing the above described premises, and carrying said package on 8/31/76 to such premises.

WHEREFORE, your deponent respectfully requests that a search warrant issue to your deponent or to any Special Agent of the Drug Enforcement Administration authorizing him or them to enter with proper assistance at any time of the day or night, the premises known as the upstairs floor of one two family house, premises known as 25-42 23rd Street, Astoria, Queens, New York, a private dwelling, and there to search and seize a quantity of narcotic controlled substances, the cash proceeds from the sale and distribution of narcotic controlled substances, documents relating thereto, and any paraphernalia associated with distribution and use of narcotics, all of which were used in violation of narcotics laws.



Sworn to before me this
31st day of August 1976

VINCENT A. CATOGGIO

United States Magistrate

A TRUE COPY

1 we get to the actual use of that particular portion
2 of the case.

3 MR. ADLERSTEIN: That is entirely possible.

4 THE COURT: So it wouldn't be too much of a
5 problem.

6 MR. EPSTEIN: I would agree with that your
7 Honor.

8 MR. ADLERSTEIN: With respect to the agents,
9 it may be I won't have witnesses beyond a certain point
10 of the afternoon because we had anticipated there would
11 be a Wednesday date. I do have witnesses to proceed
12 with today and most of my witnesses --

13 THE COURT: Let's see if we can have the hearing
14 first and then we can pick a jury and then after that
15 we will see just what we can do today.

16 MR. ADLERSTEIN: With respect to the hearing,
17 the only issue or pre-trial issue is the Government
18 contends that Mr. Epstein has no standing to make.

19 It's the Government's feeling there is no need
20 for evidentiary hearing on the airport search and
21 seizure. So if your Honor --

22 THE COURT: Is that the area that your suppression
23 hearing is directed to?

24 MR. EPSTEIN: My direction would be two-fold:
25 one, the airport search and seizure which we do contend

1 we have standing under, and secondly, two, also be
2 directed to the seizure on or about August 31, of 1976
3 at 2542 23rd Street in Queens, at which time my client
4 was placed under arrest at an apartment.

5 The premises were searched pursuant to warrants.
6 I move to suppress the fruits of that search owing
7 that the underlying affidavit which was presented
8 to the Magistrate in support of the search warrant
9 is deficient in two respects:

10 One, the affidavit makes absolutely no mention
11 as to where the contraband is expected to be recovered.
12 The affidavit gives no information that states the
13 contraband is in the first floor apartment; the
14 contraband is in the second floor apartment.

15 The affidavit is silent on that. The only
16 thing it does say is that in the course of their
17 investigation, agents investigations by the Drug
18 Enforcement Administration has disclosed a citizen
19 of Thailand resides at the upstairs floor of the
20 above described premises.

21 Now, under a Second Circuit case as well as
22 under the Supreme Court holding such as Spinelli, and
23 the Second Circuit case, Koranthos, that assertion
24 and that illustrating the assertion, not the probable
25 cause for a magistrate to find there is reason to believe

1 that there is contraband or a crime being committed
2 at the premises I just described.

3 In Koranthos, the Second Circuit dealt --

4 THE COURT: Why don't we get to the proof?
5 Why don't we get the proof and then you can argue.
6 If you argue it now, I will have to listen to you
7 and listen to the proof.

8 MR. EPSTEIN: This just pertains to the
9 affidavit as to that particular search and seizure.

10 THE COURT: Do you have a memorandum of law
11 on this?

12 MR. EPSTEIN: Yes sir, I do. I have a copy
13 for Mr. Adlerstein. The memorandum would actually
14 refer to this particular point which I just raised
15 in Point 2 on page 5, the first point having to do
16 with the statements -- the post-arrest statements
17 of my client.

18 In Point 2, starting on page 5, in Koranthos
19 at 531 Fed. 2d, the Court of Appeals was faced with
20 a search warrant in order to discover the whereabouts
21 of certain illegal aliens and the informant was given
22 as a named individual.

23 However, the warrant and supporting affidavit
24 made no reference as to the basis of the informant's
25 belief as to where he obtained the knowledge which he

1 had then passed on to the agents.

2 The Circuit ruled in that instance that the
3 magistrate so to speak, or the judge couldn't by
4 conjecture, supply the missing element that didn't
5 appear in the affidavit. Under the Federal Rules
6 of Evidence, if a magistrate or issuing judge, after
7 reviewing the affidavit wishes additional information,
8 the Rules provide that the information can only be
9 obtained by the magistrate or judge taking the
10 additional testimony at that hearing and having that
11 testimony recorded.

12 There is no such additional testimony in this
13 case. I believe the affidavit, as set forth in my
14 motion papers, has to stand or fall on its face.
15 There is no additional information that was presented
16 to the magistrate in this case, and there is nothing
17 to the affidavit which in any way lends any credence
18 to or lends any support to provide probable cause
19 to search the second apartment.

20 In Spinelli, one of the factors decided by
21 the Supreme Court was a statement that Spinelli was
22 a well-known gambler, well-documented in police files
23 and information along that line.

24 The Court, in referring to that stated in
25 effect that is but a bald and unilluminating circumstance

1 that requires no wait in appraising the magistrate's
2 decision. I believe that looking in the affidavit,
3 all the findings of the affidavit, that the affidavit
4 gives no probable cause to believe there was
5 contraband in the second floor apartment and moreover,
6 the affidavit gives no probable cause to believe that
7 there is anybody even residing in the second floor
8 apartment.

9 The assertion that the investigation was
10 conducted gives the Court no basis on which the Court
11 can judge upon what sort of information, upon which
12 the agents relied in placing it in their affidavit
13 as given to the Magistrate Cattogio (phonetic).

14 I would state therefore that the agents entered
15 the apartment in an illegal search warrant, and
16 whatever they obtained in their search is inadmissible
17 for evidence.

18 MR. ADLERSTEIN: Mr. Epstein, in describing
19 the affidavit says there was no probable cause before
20 the Magistrate for the United States to search that
21 premises for heroin, other than the fact that there
22 is a bald statement that citizens of Thailand live
23 on the second floor.

24 Well, Mr. Epstein didn't mention about this
25 affidavit and what takes this affidavit outside the

1 realm of Koranthos and outside the realm of Spinelli.
2 The affidavit says that a package of heroin was
3 received at the airport and brought to a post office
4 and number two, that agents of the United States
5 Drug Enforcement Administration saw a man pick up
6 that item at the post office and carry it into the
7 house.

8 Mr. Epstein didn't make any mention of those
9 facts. It seems to me there can't be any more clear
10 probable cause as to the necessity of searching those
11 premises than what was spelled out in that affidavit.

12 Koranthos, is an apposite, Spinelli is an
13 apposite. The magistrate was told why that house was
14 a target for searching. As to the specific floor,
15 in the interest of justice, attempt was made to
16 specify the exact part of the house which was to be
17 searched because the Circuits have asked the Government
18 to be as specific as possible.

19 There was a statement made in the affidavit
20 that citizens of Thailand live on the second floor,
21 and that was the basis for the agents' belief that
22 the second floor was the area of the house that should
23 have been searched and the area of the house that was
24 searched.

25 There is nothing in Koranthos; there is nothing

1 to Spinelli that says that the United States has to
2 give its total thought process as to the specific
3 part of the premises. What the Circuits have asked
4 is for us to prescribe a specific part of the premises.

5 Along those lines, United States versus
6 Campinile, United States Fed. 2d, 238, where the agents
7 searched the downstairs floor in which there was
8 two apartments. It was not specified in the affidavit
9 which of the two apartments in Campinile was searched.

10 The Court said the two apartments were searched
11 but number one, the agents couldn't have expected
12 to know there were two apartments there. They made
13 a good faith effort to describe the particular area
14 to be searched.

15 So, just to summarize, your Honor, Mr. Epstein
16 is attempting to bootstrap the Koranthos and Spinelli
17 situation in a situation where those cases don't
18 apply, and that your Honor, shouldn't be misled by
19 those kinds of arguments in judging the validity of
20 warrants.

21 MR. EPSTEIN: Your Honor will see from at the
22 time the agents secured a search warrant in this case,
23 they knew the premises for which they were seeking a
24 warrant was a two-family dwelling. They stated and
25 I quote, "United States of America against --

1 THE COURT: It's a two-family dwelling?

2 MR. EPSTEIN: Yes, and they knew that.

3 THE COURT: It's set forth in your memorandum
4 of law, "Investigations by the Drug Enforcement
5 Administration has disclosed that a citizen of
6 Thailand resides at the upstairs floor of the above
7 described premises."

8 MR. EPSTEIN: My contention is that the mere
9 statement that their "investigation has disclosed,"
10 does not give the magistrate --

11 THE COURT: This is two-family?

12 MR. EPSTEIN: Yes.

13 THE COURT: No other family on that second
14 floor?

15 MR. EPSTEIN: No.

16 THE COURT: That second floor is the upstairs
17 part of that building?

18 MR. EPSTEIN: That's correct.

19 THE COURT: I don't know how much clearer it
20 can be.

21 MR. EPSTEIN: There is no basis under Spinelli.
22 What's the agents' information? Did he see it himself?
23 Did he get it from an informant? Was he told it by
24 somebody else? If so, by whom?

25 THE COURT: What's the agents' information,

Mr. Adlerstein?

2 MR. ADLERSTEIN: Well, your Honor, the agents
3 had seen a gentleman, a Thai gentleman enter into
4 the house and had looked on the outer door of the
5 building and saw that the upstairs apartment was
6 occupied with somebody with a Thai name which was
7 recognizable to them as a Thai name.

8 They clearly indicated in this affidavit why
9 they wanted to search the house.

10 THE COURT: What was the drug connection
11 with this particular location, prior to that time?

12 MR. ADLERSTEIN: Prior to that time your Honor,
13 well, it's not in the affidavit, however, they were
14 making a case with respect to Mr. Pamon and this is
15 where Mr. Pamon was known to reside.

16 Mr. Pamon had already given the agents some
17 heroin. They didn't get it on that basis. They
18 waited to get this search warrant until they had seen
19 a man pick up a package in the post office known to
20 contain heroin and bring that package to that house
21 and go inside that house and that's what the affidavit
22 says.

23 It seems to me it couldn't be more clear.

24 MR. EPSTEIN: Very briefly, I could appreciate
2, that Mr. Adlerstein makes certain representations to

1 you but you, as we agreed, are not the issuing magistrate.

2 THE COURT: That's why we would have had a
3 hearing. I was told these facts are clear so I am
4 listening to you. I would have had a hearing and
5 then I would have gotten all the facts, but both of
6 you have said the facts are clear, and you have given
7 them to me.

8 I must assume that some of what is being said
9 is true.

10 MR. EPSTEIN: I am not disputing that. The
11 facts we are giving to you, myself and Mr. Adlerstein,
12 were not the facts given to the issuing magistrate.

13 THE COURT: Why didn't you tell me to have the
14 hearing? You insisted that this was the right way
15 to do it.

16 MR. EPSTEIN: Your Honor, I don't think we
17 are in disagreement. The only thing that was presented
18 to the magistrate was the affidavit and the search
19 warrant which the agents sought -- Mr. Adlerstein
20 from Agent Oaks, probably saying a hello, -- there
21 was no other representation made to the magistrate
22 and that's not in dispute either, so that affidavit
23 was all that was presented to the issuing magistrate.
24 I am claiming that the information that was --

2 THE COURT: Let me have the affidavit or a copy

1 if you have it. Thank you.

2 Go ahead. I am listening, Mr. Epstein.

3 MR. EPSTEIN: My contention is that the
4 affidavit before you is all that was before the
5 magistrate and that affidavit is insufficient on
6 its face to establish what the basis of information
7 was that the agents had in order in the first place
8 to say there was a Thai national living in the upstairs
9 floor on the premises described and moreover, the
10 affidavit gives absolutely no information for including
11 that the Thai national who entered the building
12 carrying a package, entered either the upstairs floor
13 or entered the downstairs apartment.

14 So the magistrate would have no way of knowing
15 in which of the two apartments and from the face of
16 the paper, it's a two-family building, but in which
17 of the two the crime was being committed --

18 THE COURT: I'll look at it, but I don't think
19 there is too much question here, but I will look at
20 it clearly.

21 I don't think there is too much question here.

22 MR. EPSTEIN: Your Honor, the only other
23 matter other than in the area of search and seizure
24 would be the airport search on or about August 26, 1976
25 and my client was charged in the second count in the

1 indictment with knowingly importing into the United
2 States Custom territories a quantity of heroin. We
3 would contend that in view of the fact that he is
4 charged only with the substantive count insofar as
5 the importation is concerned, in order to prove him on
6 the substantive count, the Government would have to
7 show with a degree of constructive possession.

8 THE COURT: A matter of proof.

9 MR. EPSTEIN: My contention is that since the
10 Government would have to prove at least that to secure
11 a conviction on my client --

12 MR. ADLERSTEIN: I can make some of this
13 argument unnecessary. The Government has decided
14 that the Government will be dismissing Counts 2 and 3
15 and only go on the basis of Count 1.

16 THE COURT: Only Count 1 he is going to go
17 on which is the possession with intent to distribute
18 on August 31.

19 MR. EPSTEIN: If all we are going on is Count 1
20 I think it will be a very brief proceeding and I would
21 concur. I wouldn't consider going to proceed on the
22 motion to suppress as far as the airport is concerned.

23 THE COURT: It's just the motion to suppress
24 on the search warrant. That's the only thing you
25 want the Court to consider?

1 MR. EPSTEIN: That's correct your Honor.

2 THE COURT: I will take a brief adjournment
3 and look at it.

4 MR. ADLERSTEIN: Your Honor, I would ask your
5 Honor -- I would ask that your Honor look at
6 Campinile, case 516 Fed. 2d, while your Honor looks
7 through the papers.

8 (time noted 10:30 A.M.)

9 THE COURT: The motion to suppress based on
10 the search warrant in this case is -- this motion being
11 made by the defendant is denied. The Court finds
12 that there was sufficient probable cause for the issuance
13 of a search warrant. So the motion is denied.

14 MR. ADLERSTEIN: Your Honor, I believe I
15 misspoke. I mentioned Counts 2 and 3 were dismissed.
16 I believe it's only Count 2; the importation. The
17 conspiracy will be in the case.

18 THE COURT: The application to dismiss Count 2
19 by the Government is granted. In other words, the
20 trial is for Count 1 and Count 3?

21 MR. ADLERSTEIN: That's right your Honor.

22 THE COURT: Mr. Epstein, is there anything
23 further?

24 MR. EPSTEIN: No your Honor. I think that
25 takes care of the three-fold argument I had on the

REPORT OF INVESTIGATION

PAGE 1 OF 1

TITLE PAMON, Teera		IDENTIFIER DA4-H2 PROGRAM CODE	FILE NUMBER CL-75-0440 (Op.11)
ACTION REQUESTED FROM Dwight S. Rabb Special Agent New York, New York September 21, 1976		OTHER OFFICERS S/A John H. Toal S/A James E. Kibble S/A Fred E. Moore S/A William D. Oakes S/A Kenneth Keefe	CROSS FILE ☐ ☐ ☐ ☐ ☐ RELATED FILES
SUBJECT Arrest of Pravitt PIYACHINAVAN on August 31, 1976.			

SYNOPSIS:

This report pertains to a controlled mail delivery conducted on August 31, 1976 of Exhibit 5A and the execution of a search warrant at the premises located at 25-42 23rd Street, Queens, New York.

DETAILS:

1. On August 25, 1976 U.S. Customs Officer Donald Hughes, #3011, at John F. Kennedy International Airport seized three separate mail parcels containing a total of 572 grams (net) of heroin. Two of the parcels were addressed to K. SHENSOOYA, 25-42 23rd Street, Astoria, New York which is the home address of T defendant Teera PAMON. The third parcel was addressed to N. Montre, c/o Nine-O-Seven Company, 27-13 163rd Street, Flushing, New York.

2. The return address on all three parcels was 104 Prachanaramith Road, Bangla Chacheong SAO, Thailand. The senders' names on the parcels were T. Sudge and M. Visutti. The parcels were labelled Exhibits 3, 4 & 5.

Exhibit #3

To: K. Shensooya
25-42 23rd Street
Astoria, New York

From: T. Sudge
104 Prachanaramith
Cha Cheong SAO
Thailand

BEST COPY AVAILABLE

Dwight S. Rabb, Special Agent

John J. Coleman, Group Supervisor

DATE
8-24-76

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Department of Justice

26 7-24-76

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REPORT OF INVESTIGATION

(Continuation)

September 21, 1976

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FILL NUMBER

PAMON, Teera

IDENTIFIER

DA4-H2

PROGRAM CODE

CL-75-0440

Exhibit #4:

To: N. MONTRE
c/o Nine-O-Seven Company
27-13 163rd Street
Flushing, New York

From: T. Sudge
104 Prachanaramith
Che Cheong SAO
Thailand

Exhibit #5:

To: K. Shensooya
25-42 23rd St.
Astoria NY, US. 11102

From: M. VISUTHI
104 Prachanaramith Rd.
Bangkla Chacheong
SAO, Thailand

3. The three parcels were delivered to the Customs Mail Detention room at 201 Varick Street on August 27, 1976 by Customs Officer Hughes. DEA Special Agent Kenneth Keefe of the UID Section conducted a preliminary investigation on the addressee and determined that an active case was being conducted by Agents Taylor and Toal of Group #11. On July 12, 1976, in anticipation of drugs being received by PAMON from accomplices overseas, a mail cover in accordance with Section 233.2 of the Postal Service Manual was requested by DEA, Group 11, for the address of Teera PAMON, 25-42 23rd Street, Queens, New York. Accordingly, the decision was made to conduct a controlled mail delivery. Special Agent Keefe notified U.S. Postal Inspector James Johnson that the delivery should be planned for Tuesday, August 31, 1976.

4. On August 30, 1976 Special Agent Keefe substituted a non-drug substance for most of the alleged heroin in Exhibit #5, as witnessed by Saul Silverstein, Customs Detention Clerk, at 201 Varick Street, New York City, New York. The original heroin remained in the Customs Vault.

5. At approximately 9:00 A.M., August 31, 1976, Special Agent Keefe and U.S. Postal Inspector James Johnson picked up the mail parcel (Exhibit 5A) containing the substituted white powder and a sample of the original heroin and delivered it to the Astoria Post Office located at 27-40 21st Street, Astoria, New York. Inspector Johnson maintained custody and surveillance of Exhibit 5A. Special Agent William Oakes was standing by with Assistant United States Attorney R.L. Adlerstein at the U.S. District Court for the Eastern District of New York to secure a search warrant for the premises in the event the package was picked up and taken to the address on the package. On August 31, 1976 at approximately 7:00 A.M., surveillance

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REPORT OF INVESTIGATION

(Continuation) September 22, 1976

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TITLE PAMON, Teera	IDENTIFIER DA4-H2	FILE NUMBER C1-75-0440
PROGRAM CODE		

was initiated on the residence of Teera PAMON at 25-42 23rd Street, Astoria, New York. Teera PAMON departed his residence at approximately 7:20 A.M. for his place of employment (the AWISCO CORPORATION located at 55-16 43rd Street, Maspeth, New York). Surveillance was maintained at both his place of employment and his residence.

6. At approximately 10:45 A.M. the mail carrier (Sam Crocker, mail carrier for that area, who was interviewed and briefed by S/A Keefe and Postal Inspector Johnson earlier that morning) delivered an official Postal Notice advising the addressee of a parcel to be picked up from the U.S. Post Office servicing that area.

7. Mr. PIYACHINAVAN who was present when the mail carrier arrived, retrieved the notice from the mail box and questioned the mail carrier if the parcel was a package. PIYACHINAVAN then proceeded to the U.S. Post Office located at 27-40 21st Street, Astoria, New York. PIYACHINAVAN presented the Postal Notice and after receiving the package, PIYACHINAVAN returned to 25-42 23rd Street, Queens, New York (Teera PAMON's residence) with the parcel. At approximately 11:15 A.M. Special Agent Oakes was notified by S/A Rabb of these facts and S/A Oakes was instructed to apply for a search warrant.

8. At approximately 11:35 A.M., after being advised by S/A Oakes that a search warrant had been issued for the premises of 25-42 23rd Street, Queens, New York, Special Agents Moore, Kibble, Keefe and Rabb knocked on the door of the 2nd floor apartment at 25-42 23rd Street and identified themselves as Federal Agents. The door was opened by PIYACHINAVAN; the agents again identified themselves and entered the apartment. A cursory search of the apartment was conducted for other occupants. PIYACHINAVAN was alone in the apartment. PIYACHINAVAN was asked if he spoke English. His response was "a little". He was told by S/A Kibble that he was under arrest for receiving narcotics, "dope". PIYACHINAVAN stated that the package was not his; he stated he had "picked it up for Teera" and did not know the name on the package. The mail parcel, Exhibit #5, was observed on a sofa in the front room opened with two clear plastic bags containing white powder exposed. The execution of the search warrant was effected by Special Agents Oakes, Moore, Kibble, Keefe and Rabb (see DEA-6 by S/A Oakes dated 9-21-76 re: Execution and return of the search warrant).

9. Mr. PIYACHINAVAN was then transported to the New York Regional Office by Special Agents Rabb and Keefe where he was fingerprinted and photographed. Mr. PIYACHINAVAN stated to Special Agent Rabb that he could understand English, if it was spoken slowly. In the presence of Special Agent Keefe and Postal Inspector James JOHNSON, Special Agent Rabb gave Mr. PIYACHINAVAN a copy of

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REPORT OF INVESTIGATION
(Continuation)

DATE
September 22, 1976

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FILE TITLE PAXON, Teera	IDENTIFIER DA4-H2 PROGRAM CODE	FILE NUMBER C1-75-0-10
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the Miranda Rights, DEA-13A. PIYACHINAVAN read the card and said he understood everything on it. Special Agent Rabb then read the Miranda Warnings to him orally. PIYACHINAVAN stated that he is in this country on a student visa, attending Long Island University and requested to have a lawyer. He was then transported to the Eastern District of New York, Assistant United States Attorney Clayman's office for an interview and later that day arraigned before U.S. Magistrate Catoggio who set bail at \$100,000.00 cash or surety.

CUSTODY OF EVIDENCE:

1. Exhibits 3, 4, and 5 were seized by U.S. Customs Officer Donald Hughes, #3011, on 8-25-76 and turned over to U.S. Customs Detention at 201 Varick Street on 8-27-76. The exhibits remained at 201 Varick Street until they were picked up by S/A Rabb and S/A Keefe on 9-02-76 and submitted to the DEA Regional Laboratory by S/A Rabb.

2. Exhibit 5A is a mail parcel addressed to Shensooya K, 25-42 23rd St, Astoria, NY. The original narcotics in Exhibit #5A were removed, with the exception of a sample which was placed in Exhibit #5A with the substituted non-narcotic mixture by S/A Keefe. Exhibit #5A was released by Customs Mail Detention to Postal Inspector James Johnson on 8-31-76. The exhibit was picked up at the Astoria Post Office by Pravitt PIYACHINAVAN on 8-31-76. Exhibit #5A was seized by Special Agent Rabb from PIYACHINAVAN on 8-31-76, turned over to Special Agent Toal on 8-31-76 who deposited it in the overnight vault. Exhibit #5A was removed by Special Agent Rabb on 9-02-76 and turned over to the Regional Laboratory.

PHYSICAL DESCRIPTION:

1. Pravitt PIYACHINAVAN - (No NADDIS number available) - DOB: 3-08-49, Thai male, 5'9" tall, 130 pounds, black hair, black eyes, wearing dungarees, black shoes and a light blue shirt.

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Drug Enforcement Administration
Department of Justice

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1 THE COURT: Now, I understand that counsel would
2 like the Court to charge an attempt.

3 MR. EPSTEIN: I would, Judge. I think under the
4 facts of the case and the case which I brought to the
5 attention of your clerk prior to lunch, I think the
6 facts basically bring out a fact that there was an
7 attempt to distribute rather than a completed crime.

8 It makes out, I think, a case of factual
9 impossibility. Obviously, he couldn't distribute that
10 degree of lactose but if they find he had a requisite
11 attempt, he could be found guilty.

12 One case in which this was done was United States
13 vs. Rodriguez. She got one day of supervised probation.
14 It went to the Court of Appeals and they reversed and
15 sent it back.

16 MR. ADLERSTEIN: I agree with Mr. Epstein in sub-
17 stance. However, I think the attempt was an attempt
18 of possession with the intent to distribute, not the
19 attempted distribution. An attempt to possess rather
20 than an attempt to distribute.

21 THE COURT: I will read what I have for attempt
22 to you. I think we went over this the last time.

23 I am instructing you as a matter of law that
24 Title 21 of the United States Code Section 846 provides
25 that any person who attempts to commit the offense

1 charged in Count one may be found guilty as though he
2 actually committed the complete offenses charged. You
3 are instructed that the only charge before you, which
4 you are to consider whether the defendant attempted to
5 commit the offense charged in Count one.

6 A person is guilty of an attempt to commit a
7 crime if acting with the kind of culpability otherwise
8 required for commission of the crime, he purposely en-
9 gages in, which would constitute the crime, if the
10 attendant circumstances were as he believes them to be.

11 Therefore, if you find that the defendant's
12 action would have constituted the completed crime as
13 charged in Count one, if the surrounding circumstances
14 were as the defendant believed them to be, then you
15 may find the defendant guilty.

16 In other words, if you find that Mr. Piyachinavan's
17 actions and the state of mind met the requisite elements
18 for the offense charged, but for the differing amount
19 of heroin and if you find that the defendant believed
20 that the substance in the bags were approximately five
21 ounces of heroin, then you may find Mr. Piyachinavan
22 guilty.

23 That's what I have.

24 MR. ADLERSTEIN: Your Honor, I would **respectively**
25 request that two slight modifications be made. The

1 first one is that it's not necessary that Mr. Piyachinavan
2 had believed it was heroin. The only necessity is
3 that he believed it was narcotics.

4 I think that I cited a case to your Honor along
5 those lines in my request to charge in the last case.

6 MR. EPSTEIN: I haven't seen the request to charge.
7 I haven't seen any new requests.

8 MR. ADLERSTEIN: This was the old request to
9 charge.

10 The second modification is that it's not necessary
11 for the defendant to have believed there was any parti-
12 cular amount in the package, that it was enough for him
13 to feel that there was enough there, enough there to
14 be distributed. That would be -- would give rise to
15 a desire to distribute rather than a particular amount.

16 MR. EPSTEIN: Well, as to the first request,
17 I think especially in view of the evidence in the case,
18 that you would have to show that Mr. Piyachinavan
19 knew it was heroin. You don't have a situation where
20 I am acting as an intermediary.

21 I don't know what they are going to buy, but
22 obviously it's going to be contraband, whether it be
23 cocaine, heroin or marijuana. If they had reason to
24 believe there was a contraband involved, it would be
25 enough to satisfy.

1 In this case, it's either heroin or nothing.
2 All the testimony has been about heroin. There has
3 been no information of any other sort.

4 As far as the quantity, rather than having the
5 five ounces have a quantity of heroin. I would agree.
6 There is certainly no defense that he would use it for
7 his own use.

8 THE COURT: The substance in question was a quant-
9 ity of heroin.

10 MR. ADLERSTEIN: All right.

11 THE COURT: I will go over the charge.

12 This is the introduction. That's boiler plate.

13 This is 11.10 of Devitt and Blackmar objections
14 and rulings, statements, rulings, remarks, comments of
15 the Court during the course of the trial.

16 The jury must accept the law as the Court gives
17 it to them.

18 The indictment; I read Count one only. 841(a)(1)
19 provides in pertinent part as follows:

20 "It shall be unlawful for any person to knowingly
21 or intentionally to possess with the intent to distribute
22 a controlled substance.

23 "You are instructed as a matter of law that
24 heroin is a Schedule 1 narcotic drug controlled sub-
25 stance.

"Aiding and abetting 11.07 of Devitt and Blackmar.
It is Title 18 U.S.C. Section 2.

"Aiding and abetting defined 11.08 of Devitt and
Blackmar.

"Wilfully to cause a criminal act defined; Devitt
and Blackmar 11.09.

"And your possession is not sufficient; 11.10.

"Essential elements of the offense: The defendant
Pravit Piyachinavan did possess with the intent to
distribute a quantity of heroin, a Schedule one narcotic
drug controlled substance on or about August 31, 1976,
within the Eastern District of New York --"

MR. ADLERSTEIN: Your Honor, I think the word --
it might be wise to put the words attempt to possess
and distribute in. Your Honor is charging attempt.

MR. EPSTEIN: I would agree.

THE COURT: Attempt to possess with intent.
That's first.

Second is that defendant Piyachinavan did so
attempt to possess the heroin with the specific intent
to distribute it.

Third that the defendant Piyachinavan did so
knowingly and intentionally. Three elements.

Then I have attempt, just as I have given it to
you.

2 The indictment alleges 12 ounces of heroin was
involved.

3 The evidence in the case need not establish the
4 amount of or quantity of heroin as alleged.

5 We went over that in the last charge.

6 MR. EPSTEIN: I recall that. We had the same
7 issue.

8 THE COURT: The burden is always on the prosecution

9 On or about a certain date, proof need not estab-
10 lish the exact date of the alleged offense.

11 Regarding the indictment in the name of Tera Pamon
12 you have heard the indictment includes in Count one,
13 one Tera Pamon . You are aware that Mr. Pamon
14 is not on trial here for the acts of this crime. You
15 are instructed that it is not your role to conjecture
16 why Mr. Pamon is not on trial here. You are to make
17 no inferences or draw any conclusions as to the absence
18 of Tera Pamon . You are directed to consider the charge
19 against Mr. Piyachinavan solely on the evidence before
20 you in this trial.

21 Definitions: Distribute, possess, knowingly and
22 wilfully to act, unlawful to act, specific intent,
23 reasonable doubt, proof of knowledge and intent.

24 The fact of knowledge may be established by
25 direct or circumstantial evidence just as any other fact

1 in the case.

2 Now, it is obvious that the critical question
3 in this case is whether the defendant Mr. Piyachinavan
4 knew he had narcotics. You may not find the defendant
5 guilty unless you find beyond a reasonable doubt that
6 he knew the package was to contain narcotics.

7 In other words, that the defendant Piyachinavan
8 knew that the package that he picked up from the Post
9 Office was supposed to contain narcotics.

10 The fact of knowledge may be established by
11 direct or circumstantial evidence, just as any other
12 fact in the case. Knowledge may be proven by the
13 defendant's conduct since we have no way of looking into
14 the person's mind directly.

15 Now, in this connection, bear in mind that one
16 may not wilfully and intentionally remain ignorant of
17 a fact important and material to his conduct in order
18 to escape the consequences of the criminal law.

19 You may find the defendant acted knowingly if
20 you find that he actually knew he had narcotics or
21 that he deliberately closed his eyes to what he had every
22 reason to believe was the fact. I should like to
23 emphasize, ladies and gentlemen, that the requisite
24 knowledge cannot be established by demonstrating near
25 negligence or even foolishness on the part of the

1 defendant.

2 MR. EPSTEIN: In view of the charge I submitted,
3 I would object to that portion of the charge. I would
4 think, under the facts of this case, the jury must find
5 that he had actual knowledge that it had such in the
6 package. They base it on circumstantial evidence because
7 you don't have a high probability that he knew
8 illegal nature of what was contained in the package.

9 MR. ADLERSTEIN: That's the very question for the
10 jury. They are to know -- they should be entitled
11 to know if they feel that the guy deliberately closed
12 his eyes, figured that it was drugs, went down figuring
13 it was drugs but deliberately chose to keep a compart-
14 mentalized mind in such a way that he tried to avoid
15 knowing, that they can convict him on that basis.

16 MR. EPSTEIN: My problem with that is really,
17 I think it belongs in a case I indicated earlier. I
18 think the two cases I indicated to your Honor earlier.
19 That's the person who's sort of in the middle.

20 I am giving you a hundred dollars to deliver
21 it. Don't tell me what it is. Either it's hot merchand-
22 ise or narcotics.

23 THE COURT: As to your request to charge, that
24 is denied because it is covered basically in the
25 Court's charge and your request is actually confusing in

1 light of the attempt which the Court is charging in this
2 particular case, and your request in the third instance
3 involves a marshaling of the evidence which the Court
4 doesn't do. So, your request is denied.

5 MR. EPSTEIN: I would respectfully except. I
6 would ask your Honor to reconsider the part concerning
7 knowledge, whether it exists.

8 I think they have to find, once you got it,
9 prior to going to the Post Office, that he knew that
10 that package had heroin in it. To come into the apart-
11 ment and open it and then find heroin, I don't think
12 that's sufficient to satisfy the statute.

13 THE COURT: You have the intervening element
14 that I spoke to you about before. The fact is that
15 this package was not addressed to him. From that
16 fact alone, the jury might find that he must have known
17 there was something in the package and that's why he
18 opened it. He must have known something.

19 There was something in his mind that made him
20 open a package that didn't belong to him. This is really
21 the problem.

22 MR. EPSTEIN: I can appreciate the problem.

23 THE COURT: This is really the problem: Opening
24 a package not addressed to him creates a lot of areas
25 that open up.

1 MR. EPSTEIN: The only thing I would point out to
2 your Honor, most respectfully, the opening of a package
3 addressed to Senchoya (Phonetic). I don't believe that
4 sets forth a high degree of illegality.

5 THE COURT: There is not even any proof that
6 Senchoya was at this address.

7 MR. EPSTEIN: Since there is no proof that
8 Senchoya is even alive -- I am not going to reverse a
9 position.

10 THE COURT: Senchoya is a mystery to this particular
11 case.

12 MR. EPSTEIN: That's true. To this case, Senchoya
13 he is. I agree with you, your Honor. The case as
14 the jury has it, Senchoya is a mystery.

15 I don't think the opening of the package alone
16 would be enough to satisfy the statute. I also think
17 there is a problem with that.

18 Suppose the jury finds that the kid went to the
19 Post Office and he took it back. Goes back to the
20 apartment and he opens it or whatever he does. He
21 changes clothes first. Then he finds the heroin. What
22 about that?

23 I would submit that if they find, if they believe
24 that the first point at which Mr. Piyachinavan knew
25 that heroin was contained within this Senchoya package

1 was when he opened it and saw white powder, I don't think
2 he can be convicted at that point.

3 THE COURT: I think they have facts sufficient
4 that they can find that he knew, based on the proof
5 that they have been given in Court.

6 MR. EPSTEIN: The only difficulty that your Honor
7 will charge them that they of course can accept or
8 reject portions of testimony, so on and so forth.

9 They could find, if they reject, for example,
10 Agent Rabb and the postmen will testify and Agent
11 Keefe said that he never saw the postman give any direct-
12 ions.

13 If they reject Rabb's testimony, they can
14 basically find -- they could agree with Keefe.

15 He went to the Post Office, paid his 12 cents
16 and came back to the apartment with the package.
17 That's where the matter stands. What happens then is
18 because I had found as Keefe testified and Rabb testi-
19 fied when they got to the apartment the package was
20 opened.

21 If, however, they believe Keefe and there is
22 no outward indicia when he goes to the Post Office, they
23 would find that the first time Piyachinavan knew or
24 had cause to know the package contained heroin was
25 once the package was opened. If that's the facts, the

1 way they find them, under your Honor's charge, they
2 would find him guilty. In truth and in fact if they
3 then discovered that it was without exercising any
4 dominion or control of the contraband, he would not be
5 guilty. Piyachinavan would be in a situation that --

6 THE COURT: If that's what the jury finds.
7 I say to you, in light of what I have heard, they can
8 find that he knew. I think they have enough here to
9 find that.

10 MR. EPSTEIN: I'm not arguing with you. They
11 can reject certain testimony and accept other testimony.
12 I am merely saying that if they treat the testimony as
13 I have just indicated in my example, I think the jury
14 then has it instructed that his gaining a knowledge at
15 that point only was when the package is opened, it
16 requires the affect that the jury then be instructed.

17 If they find no degree of dominion or control--

18 THE COURT: We have to anticipate that the jury
19 will send such a question to us.

20 MR. EPSTEIN: As you well and truly know through
21 your own years of practice, when it comes to jury
22 questions, we don't know whether one juror is writing
23 them or 12 jurors are writing them. You can draw no
24 indications from jury notes. It's impossible.

25 That's why I feel they should be told this in

1 the beginning, rather than waiting.

2 THE COURT: I'm not going to change what I have
3 given to this extent in the charge.

4 MR. EPSTEIN: I respectfully except, your Honor.

5 THE COURT: Anything else, Mr. Adlerstein?

6 MR. ADLERSTEIN: No.

7 MR. EPSTEIN: You indicated you are going to
8 charge the jury on Piyachinavan as an aider and abettor.
9 I would object to that.

10 As I recall our last conversation and Mr.
11 Adlerstein and your Honor will correct me if I am in
12 error, the one he is aiding and abetting under the facts
13 in this case is an individual in Thailand, name unknown,
14 identity unknown, at the present time, -- certainly
15 unknown to this jury --

16 THE COURT: He could conceivably be aiding and
17 abetting Senchoya, too. He could conceivably be aiding
18 and abetting Senchoya.

19 The jury will never know and you and I will never
20 know. This conceivably could be so and on that alone
21 I have a perfect right to charge aiding and abetting.

22 MR. EPSTEIN: I don't want to get into the whole
23 thing with Senchoya, but there is no jury present
24 so I speak freely.

25 That could just raise more headaches. In my

1 investigations there is no Senchoya.

2 THE COURT: Conceivably based on the proof
3 that this jury is going to get, there can be such a
4 person.

5 MR. EPSTEIN: Then there is a problem because he
6 can always come and say I was charged under aiding
7 and abetting because of a guy who never lived.

8 THE COURT: If you want to put your investigator
9 on, that's up to you.

10 MR. EPSTEIN: I understand that. I'm not looking-

11 THE COURT: I'm not going to tell you what proof
12 to put in.

13 MR. EPSTEIN: Everything he could say would be
14 hearsay. I'm not going to bring up 14 different
15 people.

16 THE COURT: Based on that particular fact and
17 Government's exhibit 1 in evidence, aiding and abetting
18 is properly before this jury.

19 MR. EPSTEIN: I respectfully except, your Honor.

20 THE COURT: Now, the credibility of the witnesses
21 which is boiler plate. The testimony of Government
22 officials taken the same as any other witnesses. Effect
23 of failure of the accused to testify.

24 The law does not compel a defendant in a criminal
25 case to take the witness stand and testify and know

1 presumption of guilt may be raised and no inference of
2 any kind may be drawn from the failure of defendant
3 to testify. As stated before, the law never imposes,
4 etc.

5 11.27, Opinion evidence; expert witness; prior
6 inconsistent statement, witness other than the accused--
7 do we need this?

8 MR. EPSTEIN: The only one we have inconsistencies
9 with was Rabb. I think we should have it in.

10 THE COURT: 12.05, inconsistent statements or
11 conduct; 12.15, all available evidence need not be
12 produced.

13 Now we had a stipulation the other time to
14 stipulate to the fact in this case that the defendant
15 Pravit Piyachinavan has been a student in the United
16 States since 1969. Do we need this in?

17 MR. ADLERSTEIN: It was brought out during Rabb's
18 testimony. I don't think it's necessary.

19 MR. EPSTEIN: We didn't get in the length.

20 THE COURT: You got it from Rabb, but he didn't
21 say how long.

22 You want to put that in?

23 MR. EPSTEIN: If the parties will stipulate that
24 he has been here since 1969, I think your Honor could
25 instruct on the effective stipulation.

7 1 we start summations?

27 A

2 MR. ADLERSTEIN: Not really. I think that the
3 jury has been waiting long enough. We might as well
4 go into it.

5 THE COURT: You want to get to summations?

6 MR. ADLERSTEIN: We might as well get into
7 it.

8 THE COURT: I will give them five minutes.

9 (Thereupon a short recess was commenced at the
10 time noted, 2:48. And the proceeding continued at
11 the time noted, 2:55.)

12 THE COURT: Are you ready to proceed?

13 MR. ADLERSTEIN: Yes, Sir.

14 THE COURT: Bring in the jury.

15 (Time noted, 2:56.)

16 THE COURT: On the presentation of testimony
17 by both has been completed, you are now about to have
18 the final summations. As to the order of summations,
19 the Prosecutor will be first and then the defense may
20 sum up and then the Prosecutor alone is invited to
21 give a rebuttal.

22 At this time we will have the final summation
23 of the Prosecutor, Mr. Adlerstein. You may proceed.

24 MR. ADLERSTEIN: Your Honor, Judge Bramwell,
25 Mr. Epstein, ladies and gentlemen of the jury:

1
2 You've now heard all of the evidence in the
3 case. It's time now for the attorneys to give you
4 their summations, to argue to you on the basis of the
5 evidence. It's time now for us to pull together
6 everything that has happened in the courtroom, before
7 you, for the purposes of your deliberations.

8 The facts in the case are not complicated but
9 there should be no mistake on your part or anyone
10 else's part about the seriousness of this case because
11 of the kind of crime that is involved in this parti-
12 cular matter.

13 Judge Bramwell has already and will later on
14 instruct you on the law. You are required under the
15 law to accept the law as he gives it to you.

16 You should be mindful of the fact -- remember
17 your oath of office as jurors. You are in a very
18 real sense the guardians of the law, the protectors
19 of the rights of the defendant as well as the right
20 of the community to have the law upheld.

21 As Judge Bramwell has told you, you are re-
22 quired to decide the case without considerations of
23 prejudice or sympathy, on the basis of the evidence
24 and the evidence alone.

25 Along these lines, you are not to consider

9 1
2 what possible punishment or sentence that might be
3 imposed. Punishment is a matter solely at the dis-
4 cretion of the Court. The Court with its own under-
5 standing, and the Court with its own experience will
6 decide if you were to convict, what the proper pun-
7 ishment is.

8 Persons are chosen, mature people are chosen
9 to sit on juries because it is thought that people
10 with light experience, who have intelligence and
11 common sense, are people who are in the best position
12 to judge evidence presented in a criminal trial. I
13 would stress right now that you need not and should
14 not leave your common sense behind when you go into
15 the jury room to deliberate. You do not have to
16 accept things at face value. You may probe and you
17 should probe and analyze the evidence that is pre-
18 sented to you and, on the basis of mature and considered
19 judgment, come up with your verdict.

20 What is the case at hand? The case is about
21 a package of heroin that came into the United States
22 from Thailand, a country in Southeast Asia.

23 You have heard evidence in the case by the
24 agents who testified, who have had experience in
25 drug transactions, dealing with people who are drug

1
2 dealers. You have heard that the heroin, which was
3 introduced in evidence and shown to you in this case,
4 is worth approximately \$12,500, wholesale. Wholesale
5 meaning that it is the original price, after it first
6 comes into the United States.

7 You heard evidence from the chemist that what
8 is shown to you in this case, the heroin, which is
9 before you in evidence, is five ounces of the most
10 pure kind of heroin there is and you heard that the
11 heroin, as it goes down the chain, would be cut or
12 increased double, approximately ten times over, at
13 least, before it went to someone who would finally
14 use it, each time being worth its original value.

15 In other words, \$12,500 cut once, you have
16 another \$12,500 and cut another time, so you have
17 another \$12,500 and cut ten times as it down. That
18 is what the evidence is.

19 There should be no mistaking the kind of thing
20 we are talking about in this case. We are not talking
21 about something that is cheap. We are talking about
22 something that is not just any old thing, any old
23 kind of commodity. We are talking about a lethal
24 and dangerous drug worth a substantial amount of
25 money.

1
2 What do the facts in the case show with
3 respect to the link between this package of heroin
4 and the defendant, Mr. Piyachinavan? You heard
5 evidence that Mr. Piyachinavan came out of the house
6 on 23rd Street in Queens, right after -- not a while
7 after, but almost immediately after -- a slip of
8 paper was delivered by the postman to say, "Come
9 pick up the package" and I believe that Agent Keefe
10 and the recollection you have of the evidence is
11 yours. I am permitted to comment on it. If it
12 differs from yours, your recollection controls.

13 I believe Agent Keefe testified that
14 Mr. Piyachinavan was seen in front of the house
15 looking on the street, even before the slip of paper
16 was delivered, the slip of paper saying there is
17 a package.

18 THE COURT: The Clerk just took that slip down.
19 He's going to photostat it because there is only
20 one side which is in evidence.

21 MR. ADLERSTEIN: Very well, your Honor.

22 The slip of paper and you have seen it once
23 and I think you have a right to see it again if you
24 ask for it. What did it say? It said there is a
25 package addressed to who; Mr. Piyachinavan? To the

1
2 defendant here? No; to Senchoya (ph.), a man named
3 Senchoya, a man or perhaps a woman named Senchoya,
4 at the address that Mr. Piyachinavan was at on that
5 particular day.

6 What does Mr. Piyachinavan do when he gets
7 this slip of paper from the Post Office? What does
8 he do? Does he treat it casually? Does he say,
9 "I will take care of it later. I'll wait."

10 No, that's not what happened. He goes immed-
11 iately, immediately to the mailman who was delivering
12 mail at another address, which I submit to you, the
13 mailman had the door open of the vestibule or he
14 was right outside and how the mailman gestured at the
15 time, I submit to you, is not very important. The
16 fact is he came to the mailman. He was able to be
17 observed by the agents and the mailman was asked, as
18 you heard, "Where is the package?"

19 The mailman couldn't even remember, by the
20 way, Mr. Piyachinavan, by face. He remembered an
21 Oriental man but you had two agents who said
22 Mr. Piyachinavan was there.

23 The mailman says to Mr. Piyachinavan, "It's
24 at the Post Office."

25 Mr. Piyachinavan, where does he go? Does he

2 go directly to the Post Office without taking any kind
3 of evasive measures? Does he go right there? No,
4 he doesn't. He walks up 23rd Street in the other
5 direction and instead of turning left at the end of
6 that block, which would be more towards the direction
7 of the Post Office than otherwise, he comes right
8 and goes off another half a block and then turns
9 around and then he walks up to 21st Street, which is
10 the street where the Post Office is on, but he is
11 several blocks up from it by now and then he walks
12 up 21st Street.

13 You have the testimony of Agent Keefe and
14 Agent Rabb who said that while he was doing it, he
15 was frequently looking around, frequently looking
16 around to see what was going on around him.

17 I submit to you, ladies and gentlemen of the
18 jury, use your common sense. What does this mean?

19 Are these the actions of someone who is
20 innocently going around about his business or are
21 these the actions of somebody who knows what is going
22 on and knows what the business is about? I submit
23 he knew the business he was about that day.

24 You heard the testimony that Mr. Piyachinavan
25 goes into the Post Office and he has a slip with him

1 and he presents it to a postal clerk and he pays
2 -- I believe there is testimony to this effect --
3 that he pays a small amount of postage due and that
4 the package is given to him, again, what kind of
5 package is it? Is it a package addressed to him or
6 is it a package addressed to somebody else?
7

8 It's a package addressed to Mr. K. Senchoya;
9 25-42 23rd Street, Astoria. It's from Thailand and
10 up at the top you can see the words "birthday present."
11 Up at the top.

12 Ask yourselves, ladies and gentlemen of the
13 jury, why was Mr. Piyachinavan picking up a package
14 that wasn't addressed to him, at the first possible
15 opportunity without any kind of delay, in anticipa-
16 tion of the package arriving. Why was he doing it
17 unless he attributed some kind of importance to the
18 arrival of this package and, I submit to you, the
19 importance he attributed to it was that he knew,
20 he knew what this was about.

21 You heard evidence about what happened after
22 he left the Post Office, that he went back up 21st
23 Street, cut up Astoria Boulevard, that he passed
24 23rd Street, that he entered into what was probably
25 a candy store, only for a very short period of time.

1
2 I believe the testimony was ten or fifteen seconds,
3 and then he comes out of the candy store.

4 Why? Why go about it that way unless you are
5 just making sure that people aren't watching you.

6 Then he leaves, goes back to Astoria Boulevard,
7 goes back to 23rd Street and then back to the apart-
8 ment, a house, by the way, which he told the agents
9 wasn't his because he gave them a different address.

10 You can be sure of one thing on the basis
11 of evidence. You can be sure that whether or not
12 that was his house, he was pretty comfortable there.
13 He was the only one there because no one was seen
14 entering or leaving it when he picked up the package.
15 I'm talking about the upstairs part of the two-family
16 house and he was the only one there when the agents
17 came in and he had changed his clothes. You even
18 heard that he hung up one of the jackets in one of
19 the rooms. He put on something that was described
20 as a skirt or sarong.

21 I submit to you, ladies and gentlemen, that
22 he was pretty comfortable in that apartment. Then
23 the agents -- I think that may be distracting to the
24 jury.

25 THE COURT: I'm sorry. Continue, Mr. Adlerstein.

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2 MR. ADLERSTEIN: Because the agents had the
3 power to go into the apartment because a search
4 warrant had been issued, they went in. You heard
5 the testimony that they knocked on the door and after
6 a few seconds, Mr. Piyachinavan emerged from behind
7 the door, said "Who is it," and they identified
8 themselves as Federal agents.

9 I submit to you, ladies and gentlemen of the
10 jury, that there could be an argument here that could
11 be raised: Why if he has dangerous drugs in the
12 apartment does he open the door for the agents? Why
13 doesn't he try to hide or conceal the heroin?

14 I submit there is a perfect explanation for
15 that. He is there behind the door and the agents
16 announced that they are there. They are Federal
17 agents right on the other side of the door. So what
18 did he do? Do you think it's easy to hide the
19 quantity of heroin, when the agents are right there?
20 Do you think it's easy to do that or is it the thing
21 that you have to do under those circumstances?

22 What you have to do is open up the door and
23 just play dumb. What's happening? What's going on?
24 I don't know anything.

25 I submit that is what Mr. Piyachinavan did.

1
2 What occurs? He is taken into the kitchen
3 and Agent Keefe goes back towards the living room
4 which was not visible, by the way, from the door
5 which he testified you couldn't see the living room
6 from the hall. You had to go down the corridor in
7 order to look into the living room.

8 On the couch in the living room was the package.
9 What condition is the package in? It's been opened.
10 He just didn't fling it down, waiting for Mr. Senchoya
11 to open up his mail. Mr. Piyachinavan opened up the
12 mail not addressed to him; "Birthday present,"
13 supposedly for somebody else, and what did he do
14 with it when he opened it up? Did he just take a
15 look at it and say, "Huh, this is a photo album.
16 I like the pictures. They appear to be pictures of
17 Thailand?"

18 No, the testimony that you heard in this
19 courtroom was that the package had been opened and
20 that the front cover of the photo album that had been
21 sealed by Agent Keefe when he made the substitution,
22 as you heard about, had been unsealed and that the
23 package of heroin was visible right in the binding.

24 I submit to you, ladies and gentlemen of the
25 jury, that there is no other logical conclusion that

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2 you could draw for why Mr. Piyachinavan would have
3 had the reason he would have had to unseal, to open
4 the package not addressed to himself and to unseal
5 the cover, exposing the heroin, unless he had known
6 what the business was about; unless he had known
7 exactly why he was going to the Post Office and that
8 was to pick up the drugs.

9 I submit to you that by logic, by all reason,
10 you must draw that conclusion.

11 Judge Bramwell will charge you later on on
12 the law.

13 I submit to you that when you listen to it,
14 he will charge you with the different kinds of
15 evidence and you will hear that it is not possible
16 to photograph a man's mind so that you know exactly
17 what he is thinking, but that juries just use their
18 common sense and take from the evidence what is
19 there, and draw the kinds of conclusions that common
20 sense leads to.

21 I submit to you that whereas you don't have
22 conversations in this case, where a defendant was
23 talking about it, what kind of a case is it? It's
24 a case involving the possession with the intent to
25 distribute narcotics or, as Judge Bramwell will tell

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2 you later, it's a case where the defendant is in
3 effect accused of attempted possession which is also
4 a crime because the substitution has been made, except
5 for the fact that the DEA substituted lactose for
6 heroin, heroin would have been picked up by the
7 defendant and narcotic cases, I submit to you, are
8 not cases where people go blabbing around what kind
9 of a business they are in. They don't go announcing
10 to people who might give them up. They don't go
11 telling people about it because the whole idea of
12 the business is secretive.

13 I submit to you, ladies and gentlemen of
14 the jury, that the evidence in the case is over-
15 whelming with respect to showing the circumstances
16 and the operation of the defendant's mind that you
17 can draw from the evidence. Ask yourselves when
18 could you convict an individual if not under these
19 circumstances? What kind of commodity is it? Is it
20 just an innocent stroll down the street to pick up
21 something entirely usual; a day-to-day item? What
22 kind of a situation is it? What kind of an item
23 is it? Do you think that somebody would just send
24 Mr. Piyachinavan on a lark or Mr. Piyachinavan on a
25 lark would walk down the street and pick up \$12,500

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2 of a dangerous drug? Do you think that's usual?

3 I believe it was brought out by the defendant
4 or his attorney, Mr. Piyachinavan is a student, and
5 as a student, he cannot succumb to financial pressure
6 and do not engage as other people do in the narcotics
7 area. What kind of an individual is likely to go
8 out to the Post Office to pick up a package? Do you
9 send someone who is a lone dealer in the narcotics
10 or do you send somebody who is known to be followed
11 by the police? Who would take a chance of walking
12 through the street with this much heroin unless it
13 was somebody who figured that he was an innocent
14 type and therefore would not draw attention.

15 I submit to you again, ladies and gentlemen
16 of the jury, if you put it all together, if you
17 use your common sense, if you weight it out, you
18 must conclude there is overwhelming evidence to show,
19 beyond a reasonable doubt, that the defendant attempted
20 to pick up this heroin, did pick up some heroin, and
21 knew what he was doing. Thank you, very much.

22 THE COURT: Thank you. Mr. Epstein?

23 MR. EPSTEIN: With your Honor's permission?

24 THE COURT: You may give your final summation.

25 MR. EPSTEIN: Mr. Adlerstein, Mr. Taylor,

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2 is a 27-year-old man, who is going for a Doctorate in
3 Economics, with no prior record, no prior criminal
4 involvement, sitting in his apartment on August 23
5 waiting to pick up a package, and goes and picks it
6 up, walks from his house, walks to the Post Office --
7 is that sufficient in and of itself to establish that
8 he knew in the first instance that the package
9 contained heroin, when he got to the Post Office, and
10 that he possessed it with the intention to distribute
11 it? I submit to you there is no such evidence and I
12 submit, under the facts in this case and the law as the
13 Court will give it to you, the verdict will be and must
14 indeed be not guilty.

15 THE COURT: Thank you, Mr. Epstein.

16 MR. EPSTEIN: Thank you.

17 THE COURT: Mr. Adlerstein, would you like to
18 give a rebuttal at this time?

19 MR. ADLERSTEIN: Yes, your Honor, I would like
20 to at this time.

21 THE COURT: Sure.

22 MR. ADLERSTEIN: Ladies and gentlemen of the
23 jury, when I spoke with you at the beginning of the
24 case, I asked you, in effect, to keep your eyes on
25 the ball in this case, to analyze the true issues in

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2 this case, the evidence as it was presented to you and
3 not to let anyone distract or to lead you down a path
4 which presented, in effect, blind alleys, and at this
5 time I have the opportunity to point out to you why
6 you should reject the argument of the other counsel as
7 just being an attempt to distract and mislead you as
8 to what the real evidence is in the case and what the
9 meaning of the evidence is, and what is really the
10 chief example of the approach of the defense counsel in
11 this case. What's the primary thing which points up
12 his approach and the fact that it is unsound and
13 should be rejected by you?

14 It's an attempt, really, on his part, I submit
15 to you, to paint his client in two different ways.
16 On the one hand, the defense attorney has told you, in
17 essence, my client is a man, 27-year-old man, as he
18 says, who is a doctoral student in this country, who
19 has a career to uphold and why would he go ahead and
20 risk doing something that could wreck his career?

21 On the other hand, you don't have a 27-year-old
22 man with a career. You have a kid -- that's the word
23 he used -- who may have been very foolish and very
24 sloppy and who didn't know how to get to the Post
25 Office and didn't know how to shake off anybody that

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2 had been following him.

3 I submit to you that the two types of individual
4 he has tried to present to you here, and I submit to
5 you that the defense counsel -- the defendant cannot
6 have it both ways because the evidence is inescapable,
7 leaning toward one conclusion: that this was a man
8 27 years old, who was old enough to know what he was
9 doing, was sophisticated enough to understand exactly
10 what he was doing and who went out to do something and
11 what he set out to do was to get a package of drugs
12 which, I submit to you, he could earn some money from.

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14 (continued next page)
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2 MR. ADLERSTEIN (Continuing): Then defense
3 counsel, I think, attempts -- I don't think he has
4 succeeded -- to set one Government witness against
5 the other, in an attempt to show you that the
6 Government is in some way trying to mislead you, some
7 way trying to show up the evidence to be something
8 that it really isn't. He attempts to say, in effect,
9 to say that Agent Keefe on the stand is giving it to
10 you straight, that Agent Keefe should be believed,
11 which I submit to you is correct, and that Agent Rabb
12 was in some way trying to prop it up, which I submit
13 to you is not the case.

14 I submit to you, you had different men who were
15 somewhat in different places at the same time who
16 observed the situation.

17 Agent Rabb, the younger man, I submit to you,
18 a sophisticated street agent, who testified in this
19 court that he has been on many buys, who testified, and
20 I think you can see it from the way he testified,
21 knows the ways of the street. It's his responsibility
22 to be out there on the street and to observe.

23 Agent Keefe, more in the nature of the desk man,
24 someone who coordinates policy between the Drug
25 Enforcement Administration and the Customs services;

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2 Agent Keefe, who happened to be on this particular
3 surveillance and who I submit to you is less keyed to
4 the exact nature of what occurred.

5 I submit to you, ladies and gentlemen, that
6 there is no important inconsistency between the two
7 stories and that there is no inconsistency that you
8 should view as significant. Both men testified that
9 the defendant took an identical route to the Post
10 Office, and I submit to you, ladies and gentlemen of
11 the jury, that whereas it certainly wasn't a very good
12 route to follow if you knew that you were being
13 watched by several DEA agents, that if you wanted to
14 shake off somebody and you knew they were following
15 you, it was certainly not a very logical way to go
16 about it, but it was a logical way to proceed if you
17 thought there was a chance somebody might be in the
18 area, if you thought there was a chance that somebody
19 might happen to notice something funny and you just
20 wanted to make sure about it, you just wanted to be
21 cautious, not to attract attention, which is the
22 position that the defendant is in.

23 How do you proceed to the Post Office? You make a
24 turn here and a turn there and you go about it in a
25 slow manner. Then they get to the Post Office.

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2 As for the stopping, I submit to you that both
3 the testimony of Agent Rabb and Agent Keefe was that
4 the defendant stopped an unusual amount of time and
5 looked in both directions for an unusual amount of
6 time, which I submit that he is being cautious and
7 careful about what is around him.

8 I submit to you, ladies and gentlemen of the
9 jury, that if the Government here had wanted, as
10 Mr. Epstein suggests, to present to you a case to
11 mislead you, that it could have blown it all out of
12 proportion, but it did not, and that Agent Keefe and
13 Rabb testified truthfully as to the events that they
14 observed, as they perceived it. What possible reason
15 was there for either of those two men to lie about
16 this particular defendant? Do you really believe
17 that either of them would lie to have convicted this
18 man? Do you really think that?

19 As for getting into the house, when the
20 agents came upstairs, who is the one who first saw the
21 package, saw that the package was open? It was Agent
22 Keefe, Agent Keefe who went into the back of the house
23 to see if there was anybody back there.

24 Agent Keefe testified that the package wasn't
25 in just any old position. He told you that the
package was open, that the heroin was in view.

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2 I submit to you, ladies and gentlemen of the jury,
3 if you believe Mr. Epstein, that the first time the
4 defendant could have known there was heroin in there
5 was after he opened the package, I submit to you that
6 that should be rejected. First of all, why do you
7 open a package that isn't addressed to you that says,
8 "Birthday Present" on it? After that, why do you
9 unseal the cover? Why, unless you know something
10 is there.

11 Fingerprints. That's another matter. Agent
12 Keefe testified that he saw the defendant carrying
13 this package for several blocks and you heard the
14 fingerprint expert testify that of all the surfaces
15 on this package, all the surfaces, including the cover,
16 including the inside, including the blue surrounding
17 we have there, of all the surfaces, it was the outer
18 package that would best take fingerprints. Yet, the
19 defendant's fingerprints were not found on that.

20 I submit to you, the defendant's fingerprints
21 were not found because people don't always leave
22 fingerprints when they touch objects. You heard
23 Agent Keefe and Mr. Ughs testify that they both
24 sealed and unsealed the wrappings and they both
25 touched the package and opened it up, and I submit to

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2 you, ladies and gentlemen, that you can infer from
3 this that there were people in Thailand who would
4 have touched this when it was made, when it was
5 packaged, when it was bought, presumably from a store,
6 and out of all that, you only get six fingerprints on
7 the whole thing, including the outer container,
8 including the inside cover. All that touching, all of
9 that activity, you only get six.

10 I submit to you, ladies and gentlemen of the
11 jury, that the Government felt you ought to under-
12 stand about fingerprints so as not to be misled as to
13 the absence of fingerprints but now after you heard
14 that testimony, you should reject that as
15 insignificant because the Government presented the
16 evidence to you to explain it to you.

17 Then we have the argument about the opening of
18 the door. Again, what were the circumstances? What
19 were the circumstances under which the defendant,
20 Mr. Piyachinavan, opened the door? Was he in the far
21 reaches of the apartment with plenty of time? Do you
22 think that he had plenty of time to flush five ounces
23 of heroin down the toilet?

24 What do you think would have been the reaction
25 of the agents if they had heard ~~substant~~ flush or

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2 heard a window open? Do you really think the best way
3 to act would be to throw the package here and throw it
4 out the window, as Mr. Epstein suggests? Do you think
5 that it's the smartest way to get out of a situation if
6 you want to get out at that point? Is it the only
7 possible tack that you can take, the only possible
8 one, which is the one the defendant took?

9 You're right there on the other side of the door
10 and they are telling you to open it up. The only
11 tack to take is open the door and play dumb, which is
12 what the defendant did. I submit to you that it was
13 the best thing he could have done. He opened the
14 door and played dumb.

15 I submit to you, ladies and gentlemen of the
16 jury, there is no reason in the world why false
17 evidence would have been presented to you in this case.
18 I submit to you that the use of your common sense
19 can only lead to one conclusion, but let's just
20 review it one more time.

21 Mr. Piyachinavan gets the slip of paper. He
22 leaves the house immediately to check with the mailman.
23 He goes to the Post Office, immediately. He takes a
24 roundabout way of getting there. He looks around as
25 he goes. He gets to the Post Office. He gets the

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2 package; a different kind of a package not addressed
3 to him; a package that says "Birthday Present" on it.

4 A 27-year-old graduate student, old enough, I
5 submit to you, to understand. He goes up to the
6 apartment; changes his clothing. He is comfortable
7 and then opens up the package and opens up the package
8 not containing just anything, not containing just a
9 mere photoalbum. He opens up the package not
10 addressed to him and what does it just happen to have
11 in it? \$12,500 worth of heroin.

12 I submit to you further, ladies and gentlemen,
13 the cutting of the heroin, you can't price heroin as
14 you price cups. I submit you can know from your own
15 experience and what you have heard about, after
16 Mr. Epstein has harkened to you, the pricing of drugs
17 is a lot different than the pricing of an innocent
18 item like a paper cup. The people in the heroin trade
19 take substantial risks and make a substantial profit.

20 You can take Agent Rabb's testimony and if there
21 had been given contrary testimony to that, it could
22 have been given to you by private detectives or other
23 agencies, but such testimony was not given to you.

24 I submit to you what was heard from defense
25 ccounsel must be rejected. Use your common sense,

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2 size up the evidence and find the defendant, and you
3 should find the defendant guilty beyond a reasonable
4 doubt.

5 THE COURT: Thank you, Mr. Adlerstein. The
6 only thing left is the charge, which I have to give you.
7 If I were to give it to you this evening, it wouldn't
8 be completed until about 5:00 o'clock. So what I am
9 going to do is I am going to let the jury leave for
10 the day and we will return tomorrow morning and
11 tomorrow morning I will give you the charge and after
12 the charge, you may deliberate.

13 You will have the entire day to do that in and
14 so I would like you to be here at 9:30 and we will
15 start at 9:30 because the Court will be ready and I
16 will give you the charge at that time and after that,
17 you can deliberate.

18 While you are aware from the courtroom, please
19 do not discuss the case with anyone on or off the jury.
20 You are not to discuss this case until after I have
21 charged you and the entire jury is present in the jury
22 room for the purpose of deliberations. That's the only
23 time that this case should be discussed.

24 The jury may leave for the day and come in
25 tomorrow morning at 9:30. Come early so we can start

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2 submitted to you, you must discuss this case only in
3 the Jury Room when all members of the Jury are
4 present.

5 You are to keep an open mind and you must not
6 decide any issue in this case until the case is
7 submitted to you for your deliberation under the
8 instruction of the Court.

9 We will now have the opening statement of the
10 Prosecutor, Mr. Adlerstein.

11 MR. ADLERSTEIN: Your Honor, Judge Bramwell,
12 Mr. Epstein, Ladies and Gentlemen of the Jury.

13 My name is Lee Adlerstein, I'm the Assistant
14 United States Attorney in this district. It is my job
15 and my responsibility to present to you the evidence
16 in this case and to represent the Government throughout
17 the course of this trial.

18 The charge against the Defendant, Mr. Piyachinavan
19 who is seated, as the Judge indicated and you are aware,
20 at the other table, is that on or about the 31st of
21 August, 1976, he possessed with intent to distribute,
22 a quantity of heroin which Judge Bramwell will tell you
23 is a controlled substance and forbidden to be possessed
24 with intent to distribute by people in this country.
25 Mr. Piyachinavan, like all criminal evidence in our

ADLERSTEIN-Opening

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2 Court is perfectly entitled to what is known as
3 presumption of innocence and that is, that no Jury is
4 permitted to convict him unless the Government proves
5 to a Jury beyond a reasonable doubt that he is guilty.
6 On the other hand as you will be told later, you also
7 have the duty, once you are presented with such evidence,
8 once you are convinced beyond a reasonable doubt, that
9 you should convict a criminal defendant and that you
10 may not look away from that responsibility for
11 personal reasons, for reasons of sympathy. I ask you
12 to keep that in mind as you deliberate this case and
13 you hear the evidence as it comes out.

14 What is the evidence by which the United States
15 is going to present to you to prove to you beyond a
16 reasonable doubt, that Mr. Piyachinavan did possess
17 heroin on the date in question with an intent to
18 distribute same. The Government will present to you
19 evidence showing that on August the 25th, 1976, well
20 less than a year ago, at John F. Kennedy Airport in the
21 international mail, there arrived a package that was
22 addressed to a resident in Queens, New York, and that,
23 that package at John F. Kennedy Airport was found by a
24 dog handler who is employed by the United States Customs
25 Department. The responsibility of the dog handler being

ADLERSTEIN-Opening

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2 that he looks with the dog, the dog being able to smell
3 drugs, for packages of drugs that are sent through the
4 mail from other countries into the United States. You
5 will hear that on August 25, 1976, the dog handler at
6 John F. Kennedy Airport sent, through signals given to
7 him by his dog, that there were drugs secreted or put
8 into a package that had come in from Thailand to the
9 United States. That the dog handler, under his authority,
10 opened up the package and found out that there was
11 heroin in that package, and you will hear evidence that
12 the heroin that was in the package was approximately
13 5 ounces of weight, pure heroin having considerable
14 value, and there will be evidence in this case about
15 what the value of the drug was.

16 Once the United States Government found the
17 package at the airport, you will hear evidence that
18 the Drug Enforcement Administration took over the case
19 from Customs because it's their responsibility to
20 investigate drug cases. You will hear the Drug
21 Enforcement Administration cite that the best thing to
22 do with this particular package was to attempt to
23 deliver it to discover who, if anyone, were to pick up
24 the package, who was the person it was going to, who
25 was the person going to take control of it. You will

ADLERSTEIN-Opening

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2 hear what they did because it's a dangerous drug,
3 they made a substitution, they took out most of the
4 heroin from the package leaving in a small amount, and
5 that they substituted another substitute that looked like
6 heroin for purposes of making the delivery, that way,
7 dangerous drugs would not be on the street.

8 You will hear evidence that what happened was,
9 the Drug Enforcement Administration left a slip at the
10 residence in Queens on 23rd Street in Astoria that the
11 drugs were to go to. You will hear that there were
12 agents of the Drug Enforcement Administration in the
13 vicinity of that house when the slip was delivered, the
14 slip saying, "if you come to the Post Office, there's
15 a package from a particular person and the package is
16 addressed to you." At any rate, the Drug Enforcement
17 Administration Agents were at the house at the time that
18 the slip was delivered, and you will hear evidence that
19 the Defendant, Mr. Piyachinavan, came from the house,
20 took the slip of paper which he had in his hand, went
21 up to the mailman to ask the mailman where does he go
22 in the Post Office. That Mr. Piyachinavan then went
23 to the Post Office and you will hear evidence he didn't
24 go to the Post Office any old way. You will hear that
25 he went to the Post Office in a roundabout manner, not

ADLERSTEIN-Opening

going directly there.

You will hear further, that Mr. Piyachinavan, the Defendant, went to that Post Office, gave the slip of paper to a Postal Clerk who was at the Post Office and was given the package, which you will see in the course of this trial, by the Postal people at the Post Office. That he took the package and that he went back home and again, as he is going back home, taking what the Government will show you were evasive notions on the way home. You will hear that when he got to the house on 23rd Street, that the package had been addressed to, that Mr. Piyachinavan went upstairs and that at the time that he went upstairs, the Agents of the Drug Enforcement Administration had prepared a search warrant which was issued at that point when they told another Agent who was at the Courthouse, that the man with the package had gone into this house. You will hear that the Agents, then after the search warrant was issued under their authority, with the warrant in hand, went to the apartment. That they knocked on the door, that they went into the apartment and that Mr. Piyachinavan was there alone in that apartment.

You will hear Mr. Piyachinavan had changed part of his clothing after Mr. Piyachinavan got up to the

ADLERSTEIN-Opening

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2 apartment and you will hear further, that when the
3 Agents got into the living room of that apartment,
4 that they saw on the couch in the living room, open on
5 the couch, the package which had been delivered to
6 Mr. Piyachinavan at the Post Office. And, you will
7 hear that the heroin, or the actual substituted
8 substance as well as the heroin that was still left in
9 the package, was plainly in view at the time that the
10 Agents entered into that living room. That is the
11 substance of the case.

12 The issue in the case is going to be whether or
13 not the Defendant, Mr. Piyachinavan, knew what was in
14 that package. You are asked to decide, to evaluate the
15 evidence on the basis of your common sense, to determine
16 whether an individual who claims the package under such
17 circumstances and then who goes into their house and
18 then who opens the package, whether that individual
19 knew that the package contained narcotics or drugs.
20 During the course of this case, I would ask you, as you
21 evaluate the evidence, keep in mind the kind of a case
22 this is, keep in mind that this case involves dangerous
23 drugs, a substance which when people are dealing in,
24 they don't announce to the entire world what they are
25 doing. Keep in mind that this is the kind of a situation

ADLERSTEIN-Opening

1 where people act as secretive as possible while they're
2 dealing because they don't want other people to know
3 that they're doing. Keep that in mind when you are
4 evaluating the evidence. Use your common sense in
5 evaluating the evidence as it comes in. Remember that
6 the pure heroin is a highly volatile and dangerous
7 commodity, this heroin which came into the United
8 States, and I ask you also during the course of the
9 trial as the evidence comes in, you not be confused
10 by extraneous issues which may arise during the course
11 of the case, by either names that may be thrown around,
12 by other people who might be thrown into it, because
13 I submit to you, the Government's evidence is going to
14 be simple. It's going to be to the point, it's going
15 to concentrate on what this Defendant did and that is
16 what the case would involve, and I submit to you
17 that at the end of the case, after you've heard the
18 evidence and you've seen it and you've gotten the feel
19 for what happened, that you will find beyond a reasonable
20 doubt that the Defendant is guilty of having possessed
21 the narcotics with an intent to distribute and I thank
22 you very much.

23
24 MR. EPSTEIN: At this time, Mr. Piyachinavan
25 would waive opening.

EPSTEIN

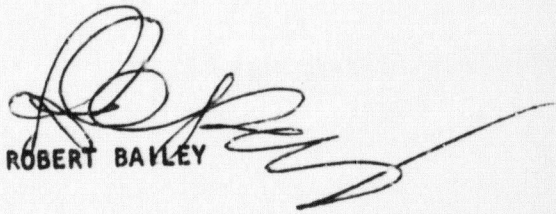
STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 22 day of July 1977 deponent served the within *affidavit* upon U.S. Atty., East. Dist. of NY

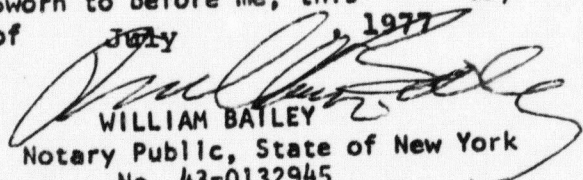
attorney(s) for
Appellee

In this action, at
225 Cadman Plaza East, Brooklyn, NY

the address(es) designated by said attorney(s) for that purpose by depositing
_____ copies of same enclosed in a postpaid properly addressed wrapper, in an
official depository under the exclusive care and custody of the United States
post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 22 day
of July, 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978